



32

## SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

January 13, 1981

Housing Authority of the  
City of Sacramento  
Sacramento, California

Honorable Members in Session:

CITY GOVERNING BOARD

PHILLIP L. ISENBERG, MAYOR  
LLOYD CONNELLY  
BLAINE H. FISHER  
THOMAS R. HOEBER  
DOUGLAS N. POPE  
JOHN ROBERTS  
LYNN ROBE  
ANNE RUDIN  
DANIEL E. THOMPSON

SUBJECT: Amendment to Cover Letter Regarding Consent  
to Substitution of Subcontractors on Reha-  
bilitation Work at Former San Carlos Motel

Our cover letter of January 9, 1981 and the attendant exhibits thereto make reference to "Dove Intermountain Development, Inc." and the corporate general contractor's license was issued in that name. Subsequent to that date, it was learned that the proper name of the corporation is Dove Intermountain Developers, Inc. and the license to be issued by the Contractors License Board to that entity is to be modified accordingly.

COUNTY GOVERNING BOARD

ILLA COLLIN  
C. TOBIAS (TOBY) JOHNSON  
JOSEPH E. (TED) SHEEDY  
SANDRA R. SMOLEY  
FRED G. WADE

Additionally, it was determined that Ross's Painting, listed in the original resolution as the firm being substituted in the sheetrock trade, was not properly licensed for that trade. Accordingly, subsequent to the date of our cover letter, it was determined that Dove Intermountain Developers, Inc., doing business as Dove, Inc., would substitute into that trade as well.

EXECUTIVE DIRECTOR  
WILLIAM G. SELINE

P.O. Box 1834  
SACRAMENTO, CA 95809  
630 I STREET  
SACRAMENTO, CA 95814  
(916) 444-9210

A revised resolution incorporating the aforementioned matters has been prepared and is attached for your consideration.

Very truly yours,

*William H. Edgar*

WILLIAM H. EDGAR  
Interim Executive Director

RESOLUTION NO. ~~81-001~~ 81-001

Adopted by the Housing Authority of the City of Sacramento

January 13, 1981

CONSENTING TO THE SUBSTITUTION OF  
CERTAIN SUBCONTRACTORS RELATING TO THE  
CONTRACT FOR REHABILITATION WORK  
AT THE FORMER SAN CARLOS MOTEL

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF  
SACRAMENTO:

Section 1. Good cause appearing, the Housing Authority  
of the City of Sacramento hereby consents to the substitution of  
the following subcontractors for the trades indicated in place  
and instead of those subcontractors listed for the trades indi-  
cated in the original bid documents submitted by Dove Intermountain  
Developers, Inc. doing business as Dove, Inc.:

- Dove Intermountain Developers,  
Inc. DBA Dove, Inc. ....Roofing, Windows,  
Electrical, Painting,  
Sheetrock
- Scalier Industries, Inc. ....Heating, Ventilation,  
Air Conditioning
- John G. Morgan .....Finish Floors

\_\_\_\_\_  
CHAIRMAN

ATTEST:

William H. Ely  
Secretary

**APPROVED**  
SACRAMENTO HOUSING AUTHORITY

Date 1-13-81



32

## SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

January 9, 1981

Housing Authority of the  
City of Sacramento  
Sacramento, California

### CITY GOVERNING BOARD

PHILLIP L. ISENBERG, MAYOR  
LLOYD CONNELLY  
BLAINE H. FISHER  
THOMAS R. HOEBER  
DOUGLAS N. POPE  
JOHN ROBERTS  
LYNN ROBIE  
ANNE RUDIN  
DANIEL E. THOMPSON

Honorable Members in Session:

SUBJECT: Consent to Substitutions of Subcontractors on  
Rehabilitation Work at the Former San Carlos  
Motel

### SUMMARY

### COUNTY GOVERNING BOARD

ILLA COLLIN  
C. TOBIAS (TOBY) JOHNSON  
JOSEPH E. (TED) SHEEDY  
SANDRA R. SMOLEY  
FRED G. WADE

By the attached resolution you consent to the substitution of certain subcontractors by the general contractor relative to the rehabilitation work at the former San Carlos Motel.

### BACKGROUND

EXECUTIVE DIRECTOR  
WILLIAM G. SELINE

P.O. Box 1834  
SACRAMENTO, CA 95809  
630 I STREET  
SACRAMENTO, CA 95814  
(916) 444-9210

On December 9, 1980 you awarded a contract for certain rehabilitation at the former San Carlos Motel to Dove, Inc. of Lakeport, California. Subsequent to that authorization and pursuant to your direction a contract was executed by the Executive Director with Dove, Inc. Subsequently, Dove, Inc. has informed us that it desires to make substitutions of certain subcontractors in place of those originally named in the bid documents. Because Section 4107 of the Government Code requires the consent of the awarding authority for such substitution these matters are being presented to you for your approval.

Attached is a revised list of subcontractors reflecting the substitutions requested. Also attached are copies of letters on file with the Agency by which the withdrawing subcontractors who were named in the original bidding documents indicate the reasons for their withdrawal. In summary, the withdrawing subcontractors, the trade affected, the statutory authorization for their withdrawal, and the reason given for the withdrawal are shown in the table below.

1-13-81

# SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

Housing Authority of the  
City of Sacramento  
January 9, 1981  
Page Two

<u>Withdrawing Subcontractor</u>	<u>Trade</u>	<u>Section No.</u>	<u>Reason</u>
Ron Cox Roofing	Roofing	4107(a)(6)	Unlicensed
J & D Windows	Windows	4107(a)(6)	Unlicensed
Burnam Drywall	Sheetrock	4107(a)(6)	Unlicensed
Olmstead Electrical	Electrical	4107(a)(1)	Excessive work- load
River City Mechanical	HVAC	4107(a)(1)	Excessive work- load
Morgan Floors	Finish floors	4107(a)(6)	Wrong name
Swartzell Painting	Painting	4107(a)(6)	Unlicensed

The entities which are substituting in place of the aforementioned withdrawing subcontractors are listed in the attached resolution.

Subsequent to the award of the contract, it has come to the attention of Authority staff that Dove, Inc. is in reality a fictitious name for Dove Intermountain Development, Inc., a California corporation. It has also come to the attention of Authority staff that the corporate general contractor's license of Dove Intermountain Development, Inc. did not become effective until January 5, 1981, although the sole owner and qualifying officer of Dove Intermountain Development, Inc., Mr. Robert Vance, was licensed as an individual at all relevant times during the award and performance of the contract to date. The Authority's Chief Counsel has prepared a legal opinion as to the compliance of Dove, Inc. with the Contractors License Law of the State of California. That opinion is attached for your information. No action is requested of you with regard to the licensure situation.

## FINANCIAL IMPACT

There is no financial impact arising from the substitution of the subcontractors.

# SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

Housing Authority of the  
City of Sacramento  
January 9, 1981  
Page Three

## COMMISSION RECOMMENDATION

Due to the importance of maintaining the construction schedule and the short time frame available for obtaining consent to the substitution of subcontractors, this matter was not presented to the Sacramento Housing and Redevelopment Commission for its recommendation.

## RECOMMENDATION

The staff recommends that you adopt the attached resolution consenting to the substitution of subcontractors.

Respectfully submitted,

*William H. Edgar*

WILLIAM H. EDGAR  
Interim Executive Director

TRANSMITTAL TO COUNCIL:

*Walter J. Slipe*

WALTER J. SLIPE  
City Manager

Contact Person: Brenton A. Bleier

RESOLUTION NO. \_\_\_\_\_

Adopted by the Housing Authority of the City of Sacramento

January 13, 1981

CONSENTING TO THE SUBSTITUTION OF  
CERTAIN SUBCONTRACTORS RELATING TO  
THE CONTRACT FOR REHABILITATION WORK  
AT THE FORMER SAN CARLOS MOTEL.

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF  
SACRAMENTO:

Section 1. Good cause appearing, the Housing Authority  
of the City of Sacramento hereby consents to the substitution of  
the following subcontractors for the trades indicated in place and  
instead of those subcontractors listed for the trades indicated in  
the original bid documents submitted by Dove Intermountain Develop-  
ment, Inc. doing business as Dove, Inc.:

- Dove Intermountain Development,  
Inc. DBA Dove, Inc. .... Roofing, Windows,  
Electrical, Painting
- Ross's Painting ..... Sheetrock
- Scalier Industries, Inc. .... Heating, Ventilation,  
Air Conditioning
- John G. Morgan ..... Finish Floors

\_\_\_\_\_  
CHAIRMAN

ATTEST:

\_\_\_\_\_  
SECRETARY



12-19-80

In view to the facts of my license I here  
by with draw my bid I tender stand that  
I will be employed as an employee of Dore  
Construction

Ronald Lee



*Dove Inc.*  
*564- Lakeport Blvd.*  
*Lakeport, Calif.*

FROM

J & D ALUMINUM WINDOW CO.  
P.O. BOX 9, LOWER LAKE, CA 95457  
CORNER COTTAGE & CASS  
CLEARLAKE HIGHLANDS

SUBJECT

*San Carlos Motel, Redlich Wood*

DATE

*11/6/88*

MESSAGE

*We cant do the above job as  
our C-33 lic. is under the name  
of our parent company, Target Glass  
Co.*

SIGNED

*Jan Li*

REDIFORM® 45 468

POLY FAX (30 SETS) #468

NO REPLY NECESSARY

REPLY REQUESTED - USE REVERSE SIDE

JERRY BERNAN SHEETROCK  
3515 Lakeshore Blvd. #25  
Lakeport, CA 95453

December 31, 1980

Mr. Robert Vance  
Dove, Inc.  
564 Lakeport Blvd.  
Lakeport, CA 95453

RE: San Carlos Motel

Architect: Roderick Ward

Dear Mr. Vance,

Thank you for the opportunity to supply you with our proposal on the above mentioned project. I am unable to work on this project due to not having a current Contractors License.

Sincerely,

  
Jerry Bernan

December 16, 1980

Mr. Robert Vance  
Dove Inc.  
564 Lakeport Blvd.  
Lakeport, CA 95453

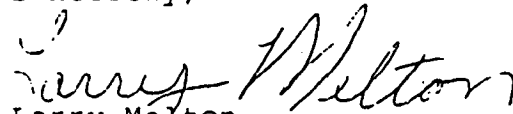
Re: San Carlos Motel  
2830 Stockton Blvd.  
Sacramento, CA  
24 unit motel remodel

Architect: Roderick Ward

Dear Mr. Vance,

Thank you for the opportunity to bid on the above mentioned project. We are unable at this time to bid on this project due to the large work load we now have in progress. We tried to contact Mr. Vance to change the sub-contractor list but he was inroute to the meeting. Please consider us on any other projects you may have coming up in the future.

Sincerely,

  
Larry Melton  
Olmsted Electric Co.  
711 N. Franklin  
Modesto, CA 95351

# River City Mechanical

11354 Amalgam Way, Rancho Cordova, Calif. 95670

Contractors Lic No  
346200

AIR CONDITIONING • HEATING • SHEET METAL

(916) 635-4604

December 16, 1980

Mr. Robert Vance  
Dove Inc.  
564 Lakeport Blvd.  
Lakeport, CA

RE: San Carlos Motel  
2830 Stockton Blvd.  
Sacto, CA  
24 unit motel remodel

Architect: Roderick Ward

Dear Mr. Vance,

Thank you for the opportunity to bid on the above mentioned project. We are unable at this time to bid on this project due to the large work load we now have in progress. We tried to contact Mr. Vance to change the sub-contractor list, but he was inroute to the meeting. Please consider us on any other projects you may have coming up in the future.

Sincerely,



Jim Keeling  
River City Mechanical  
11354 Amalgam Way Bldg. 3  
Rancho Cordova, CA 95670

**DOVE, INC.**

General Contractors - Lic. No. 373996



January 2, 1981

City of Sacramento  
Housing and Redevelopment  
630 I Street  
Sacramento, CA. 95814

Attention: Ken Larsen

Gentlemen:

In regard to our List of Subcontractors, Morgan Floors should read John C. Morgan to reflect the name in which their Contractor's License is issued. They are, in fact, the same company that will be doing the flooring on the San Carlos Motel job.

Sincerely,

Robert M. Vance  
President

RMV/kg

Donald Swartzell

December 22, 1980

Mr. Robert Vance  
Dove Inc.  
564 Lakeport Blvd.  
Lakeport, CA 95453

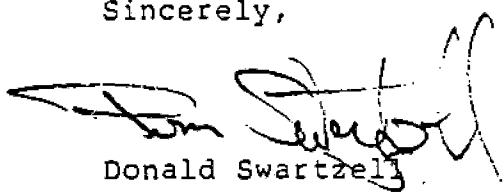
RE: San Carlos Motel

Architect: Roderick Ward

Dear Mr. Vance,

Thank you for the opportunity to bid on the above mentioned project. I am unable to bid on this project due to not having a current Contractors License.

Sincerely,



Donald Swartzell

# SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

January 8, 1981

## MEMORANDUM

TO: William H. Edgar, Interim Executive Director

FROM: Brenton A. Bleier, Chief Counsel

SUBJECT: The Contractors License of Robert Vance, Dove Intermountain Development, Inc. and Dove, Inc., and the Contract for Rehabilitation of the Former San Carlos Motel

## INTRODUCTION

You have asked me to prepare a summary for you of the facts relating to the licensure of Robert Vance, Dove Intermountain Development, Inc. and Dove, Inc. as it pertains to the enforceability of our contract relating to the rehabilitation of the former San Carlos Motel. In this memorandum I will set forth the facts as I have found them, and apply the law in this area to the facts.

## THE FACTS

Robert Vance (hereinafter "Vance") of Lakeport submitted a bid for the San Carlos work under the name of "Dove, Inc." (hereinafter "Dove"). On December 9, 1980, the City Council acting as the Governing Body of the Housing Authority, awarded the contract for the San Carlos work to Dove. As of the date of the award of the contract, Vance held an individual contractors license in the name of Caravan Homes (hereinafter "Caravan"). Also as of that date, Vance was the sole stockholder of a properly incorporated California corporation known as Dove Intermountain Development, Inc. (hereinafter "Intermountain"). Intermountain had previously had the corporate name of "Dove, Inc.". However, in July 1980, Intermountain entered into an agreement with Dove III, Inc. (hereinafter "Dove III"), a California corporation located in Beverly Hills, California, whereby Intermountain agreed to allow Dove III to assume the name of "Dove, Inc." in return for a license in favor of Intermountain to use the name "Dove, Inc." for a period of 25 years in the area of construction. However, as of the date of the award of the contract, Intermountain did not hold a valid California contractors license in any name.

Subsequent to the award of the contract by the Council and prior to the execution of the contract by the Executive Director, Vance changed the trade style on his individual license from Caravan to "Dove Construction".

William H. Edgar  
January 8, 1981  
Page Two

At some time prior to the award of the contract, Intermountain had filed with the Contractors' License Board an application for a corporate general contractors license. On January 5, 1981, the Contractors' License Board issued a valid general contractors license to Intermountain, effective that date. We are informed that on January 6, 1981 attorneys for Intermountain filed a notice of doing business under a fictitious name with the Sacramento County Clerk for use of the name Dove, Inc.

As of January 5, 1981, Roderic Ward, the Authority's supervising architect, concluded that approximately five percent (5%) of the contract work had been accomplished.

#### THE LAW

The California Contractors License Law is contained within the provisions of the California Business and Professions Code. The law provides misdemeanor penalties for those acting in the role of a contractor without an appropriate license. However, additionally, it provides at Section 7031 that

"No person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this State for the collection of compensation for the performance of any act or contract for which a license is required by this Chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract, except that such prohibition shall not apply to contractors who are individually licensed under this Chapter but who fail to comply with Section 7029."

Because the effect of this Section is to deny access to the courts for enforcement of any contract involving an unlicensed contractor, the effect of this Section is harsh indeed. Accordingly, a great many actions have been brought to the courts to interpret the applicability of this Section and accordingly, the Contractors License Law, to situations in which there was some, but not complete, compliance with the Contractors License Law. Over a period of many years, the courts of California have developed a doctrine of substantial compliance to mitigate the inequitable results which might occur in situations where something less than complete technical compliance with the law was achieved.

Because the instant case involving Intermountain falls within this category, a complete review of the case law in this area is necessary in order to determine whether or not Intermountain's attempts to comply with the Contractors License Law are sufficient.



William H. Edgar  
January 8, 1981  
Page Three

At the outset, we must recapitulate the relevant facts from a legal standpoint.

1. The Authority's contract with "Dove, Inc." is in actuality a contract with Intermountain doing business as "Dove, Inc.". The fact that Intermountain failed to file its fictitious name statement until January 6, 1981, is inconsequential. The only penalty assessed for failure to file a fictitious name statement is the inability to sue in the fictitious name until such time as such a statement is filed. However, the law is clear that such a statement may be filed at any time up to and including pendency of a suit.
2. Intermountain is now a properly licensed general contractor in the State of California and has been since January 5, 1981. The fact that Intermountain has acted in the contract with the Authority under the name of "Dove, Inc." while not having its license specifically reflect that name, constitutes a cause for disciplinary action against Intermountain by the Contractors' License Board (cf. §7117, Business and Professions Code) but does not in any way render Intermountain unlicensed.
3. Approximately five percent (5%) of the work of the contract was accomplished during the period of time that Intermountain, as an entity, was unlicensed.
4. Intermountain is solely owned by Robert Vance who has at all relevant times through this period been a fully licensed contractor in his individual capacity.

In the remainder of this memorandum I propose to review the factual setting of a series of cases in which the doctrine of substantial compliance has been applied and then a series of cases in which it has been denied.

#### SUBSTANTIAL COMPLIANCE FOUND

The doctrine of substantial compliance in California began, although not specifically denominated as such, in the case of Citizens State Bank of Long Beach v. Gentry (1937) 20 Cal.App.2d 415, 67 P.2d 364.

In Citizens the Second District Court of Appeal considered the case of one Bartlett who performed certain construction work on two buildings in Long Beach from April, 1933 to August, 1933. On June 28th of that year Bartlett transferred his individual license to a corporate license for a corporation which he solely owned. Thus for the balance of the work performed on the contract, he was unlicensed in his individual capacity. In that case the defendant

William H. Edgar  
January 8, 1981  
Page Four

refused to pay Bartlett for his work on the grounds that during a portion of the contract he was an unlicensed contractor in violation of Section 7031 (supra). The defendant alleged that because the contract was contrary to the precise technical terms of the Section that it was illegal and void and that no action could be brought to enforce it. Without using the words "substantial compliance" the Court of Appeal noted that:

"In our opinion, where a manifestly unjust and inequitable result would follow a holding that plaintiff contractor was without capacity to sue on his contract, the individual plaintiff in whose name the license stood at the time the contract was made and the corporate entity organized by him in whose name the license stood at the time the cause of action accrued, should be considered as one." (at page \_\_\_ and page 367)

Thus the Citizens court chose to avoid the highly inequitable result by regarding the individual and his alter ego corporation as one.

In the landmark case of Gatti v. Highland Park Builders (1946) 27 Cal.2d 687, 166 P.2d 265, the California Supreme Court first applied the term substantial compliance to the developing doctrine. In the Gatti case, Gatti, licensed as an individual contractor, executed a contract with Highland Park. During the course of the contract he entered into a partnership with one Moore who was also licensed individually and completed the work on a partnership basis. Inasmuch as the Contractors License Law requires a separate partnership license, Gatti and Moore had failed in technical compliance with the law. The Supreme Court in a 5 to 2 decision found that Gatti's conduct constituted substantial compliance with the licensing law even though the work was continued by the unlicensed partnership entity for almost three months before a partnership license was granted to Gatti, Moore and another unrelated individual. The court noted that:

"If defendant is allowed to defeat plaintiff's legitimate claim on this technical ground, resting on an unnecessarily strict construction of the statutory provision for the additional joint contractors license and denying any effect to the combination license in fact issued to plaintiffs and a third person as above recited, the legislative scheme in relation to the licensing of contractors, intended 'for the safety and protection of the public', would become an unwarranted shield for the avoidance of a just obligation." (at page \_\_\_ and page 266).

William H. Edgar  
January 8, 1981  
Page Five

Without specifically mentioning it the Gatti court again seemed to follow the Citizens alter ego analysis. It should be noted that in the instant case the alter ego analogy clearly applies and the unlicensed entity conducted a very small proportion of the actual construction for a period of less than one month.

In Weiman v. Superior Court (1959) 51 Cal.2d 710, 336 P.2d 489, the California Supreme Court again considered the doctrine of substantial compliance. In Weiman, the contractor, one Nelson, was at all times individually licensed as a contractor. He made a construction contract with Weiman in his individual capacity and thereafter incorporated and assigned the contract to the corporation which was unlicensed for an interval of time (the extent of which is unnoted by the opinion) and which subsequently became licensed. The Supreme Court noting the alter ego identity of Nelson and the corporation and also noting that the work was at all times supervised by a licensed contractor, namely Nelson as an individual, found substantial compliance.

In 1966 the Supreme Court again considered the issue in Latipac, Inc. v. Superior Court (1966) 64 Cal.2d 278, 49 Cal.Rptr. 676. Latipac was a licensed corporate general contractor at the time of the making of the contract and for the first 15 months of a 25-month construction period. At the end of 15 months, Latipac's contractor's license expired and was not renewed. Nonetheless, the Supreme Court in a 4 to 3 decision found that Latipac had substantially complied with the Contractors License Law. The majority laid stress on the fact that the responsible managing officer of Latipac was also the responsible managing officer of another fully licensed corporate general contractor, although that corporation had no contact with the subject work. In a stinging dissent Justice Mosk laid great weight on Weiman and distinguished Latipac on the grounds that in Weiman "there was at all times a duly licensed contractor on the job, either the individual who first obtained the contract or his corporate alter ego to which he assigned the contract". (at page 293) Thus it appears that in the instant case in which either Intermountain or its licensed alter ego Vance were at all times on the job, the minority in Latipac might well have found substantial compliance.

In Vitek, Inc. v. Alvarado Ice Place, Inc. (1974) 34 Cal.App.3d 586, 110 Cal.Rptr. 86, the Fourth District Court of appeal considered a case of a corporate general contractor who was not licensed at the time the written contract was executed but obtained a license within a few days and was licensed during the performance of the work. The court found substantial compliance in this instance. The Vitek case is instructive on the instant case in that, in the instant case, the contracting entity, Intermountain, was unlicensed in a technical sense at the execution of the contract.

William H. Edgar  
January 8, 1981  
Page Six

In the most recent case applying substantial compliance, that of Airfloor Company v. Regents of the University of California (1978) 84 Cal.App.3d 1004, 149 Cal.Rptr. 130, the Fourth District Court of Appeal applied the doctrine to a corporate contractor who was licensed at the time of the contract and through most of the performance, excepting only the last month. The court found substantial compliance even though there was no licensed supervision of the work during the unlicensed period. The court noted that:

"substantial compliance is found if the policy of the licensing statute has been effectively realized. ... but no rigid formula can be devised to measure the facts of each case against the standard". (at page 1011 and page 133).

#### SUBSTANTIAL COMPLIANCE NOT FOUND

A review of the law in this area would not be complete without distinguishing the factual settings of those cases in which the courts have not found substantial compliance. In the early case of Lewis and Queen v. N. M. Ball Sons (1957) 48 Cal.2d 141, 301 P.2d 713, the Supreme Court denied substantial compliance in the case of an unlicensed partnership in which one of the partners only was individually licensed and no partnership license existed at any time during the contract period. This case is of course distinguishable from the instant case in that in Lewis and Queen the contracting entity did not obtain a license during any portion of the work.

In Steinwinter v. Maxwell (1960) 183 Cal.App.2d 34, 6 Cal.Rptr. 496, the Fourth District Court of Appeal denied substantial compliance relief to a contracting partnership which was not licensed at any time during the contract although in that case one of the partners was licensed and a corporation composed of the same two partners was licensed at all times during the contract. This case is initially disturbing in that the alter ego corporation was licensed at all times during the contract but can be distinguished in that the contracting entity again made no effort to obtain a license at any time during the period of performance. Additionally, it should be noted that this case preceded the Latipac case in which the Supreme Court gave great impetus to the substantial compliance doctrine. Additionally, perhaps motivated by the inequitable result of the Steinwinter case, the legislature in its next session, in 1961, amended Section 7031 to specifically exclude factual settings similar to this. As a result, Steinwinter may not only be distinguished but may well be limited to its facts and of little precedential value.

William H. Edgar  
January 8, 1981  
Page Seven

In General Insurance Company v. Superior Court (1972) 26 Cal.App. 3d 176, 102 Cal.Rptr. 541, a corporate contractor was denied substantial compliance relief when he did not have a license at the time the contract was entered into or when the work was performed, even though the sole owner of the corporation was personally licensed and managed the work performed on the contract. This case is initially disturbing in that again the Fourth District Court of Appeal seems to disregard the presence of the alter ego, the individually licensed owner, during the performance of the work. However, it must be noted that the corporate contractor made no effort to obtain a license at any time during the work and in fact did not obtain its corporate license until several months after the completion of the work. If this decision is to be rationally related to those of the very same court in Vitek and Airfloor, the distinguishing factor must be the absolute absence of any license by the contracting entity during performance of the work. Of course, in the instant case, we know that Intermountain obtained a valid contracting license after only five percent of the work was completed.

In Weeks v. Merritt Building and Construction Company (1974) 39 Cal.App. 3d 520, 114 Cal.Rptr. 209, the First District Court of Appeal denied substantial compliance relief to a licensed subcontractor who performed 73% of the work, incurred a heart attack and assigned the balance of his contract to an unlicensed contractor. The court laid great stress to the fact that the licensed contractor believed "that he had neither control nor the right of control over the (remaining) performance of the subcontract". (at page 523 and page 211) Apparently, the missing requirement of substantial compliance in the Weeks case was licensed supervision over all of the work. In the instant case, of course, that element is present.

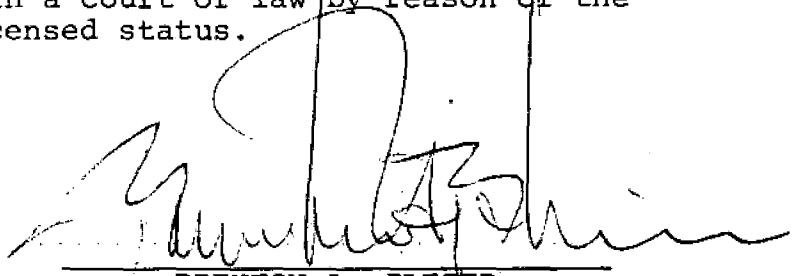
Finally, in Brown v. Solano County Business Development, Inc. (1979) 92 Cal.App.3d 192, 154 Cal.Rptr. 700, the First District Court of Appeal again denied substantial compliance relief to an individually licensed contractor who although he possessed a valid license at the time of the contract and during a brief initial period of performance maintained no license thereafter. The court again laid stress on the lack of licensed supervision during the entire performance of the work.

#### CONCLUSION

As can be seen from the foregoing review of the extensive case material, there exists a liberalizing trend in California toward allowing substantial compliance relief if (1) the contracting entity is licensed for some substantial period of the work, and (2) there is licensed supervision of the work throughout its entire performance. In the instant case, if Intermountain proceeds to complete the work as anticipated, it will have been licensed

William H. Edgar  
January 8, 1981  
Page Eight

through 95% of the performance of the work and all of the work will have been accomplished under the direct supervision of Vance who is individually licensed throughout the entire period of performance. Accordingly, I am of the opinion based upon a complete review of the case law in this area that Intermountain has achieved substantial compliance with the provisions of the Contractors License Law and would accordingly not be precluded from enforcing the Authority's obligations in a court of law by reason of the temporary period of its unlicensed status.



---

BRENTON A. BLEIER  
Chief Counsel

BAB.bj

# SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

January 9, 1981

TO: William H. Edgar, Interim Executive Director

FROM: Brenton A. Bleier, Chief Counsel

SUBJECT: Substitution of Subcontractors and Bonding Changes  
Relating to Dove, Inc. and the Rehabilitation Work  
at the Former San Carlos Motel

You have asked me to review the matter of the substitution of subcontractors by Dove, Inc. The applicable law is summarized in Section 4107 of the Government Code which provides that if certain statutory conditions occur with existing subcontractors after a contract has been awarded to a winning bidder, the general may obtain the consent of the awarding authority for a substitution. The public purpose thought to be served by this statute is the prevention of "bid shopping", that is, a general contractor having received a firm bid shopping to find a new subcontractor who will perform at a lower price than the subcontractor named in the bid documents. Accordingly, it is important in determining the propriety of the substitution to determine the reason for the withdrawal or removal of the subcontractor named in the original bidding documents.

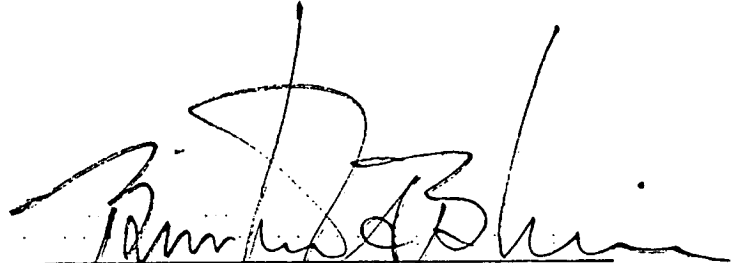
In the case of Dove, Inc., I am informed that the reason for requesting substitution in all of the instances is either that the original subcontractor was not licensed in the name of the entity originally listed or that the originally listed subcontractor voluntarily desires to withdraw due to workload or scheduling factors. The lack of an appropriate license is a statutory reason for substitution and if the voluntary withdrawal is such as to indicate an unwillingness of the subcontractor to execute a contract with the general in accordance with the bid presented, this also constitutes a statutory reason for substitution.

I was informed on Monday, January 5, 1981, by attorney R. Richard Williams, representing Dove, Inc., that the bonding company on the San Carlos project would be modifying their bond to include the names of all of the possible entities which have been involved in the work at the San Carlos project in order to remove any doubt as to the applicability of the bond to each and every entity which may have been involved. While I do not believe that this is absolutely necessary, I do believe that it adds some additional security to the Authority's position in that it removes the possibility that the bonding company upon presentation of a claim by the Authority could raise any technical arguments as to the entities involved.

William H. Edgar  
January 9, 1981  
Page Two

CONCLUSION

I would recommend that the substitutions of subcontractors be presented to the City Council acting as the Governing Body of the Housing Authority for its approval at the earliest possible date.



BRENTON A. BLEIER  
Chief Counsel

BAB.bj