

# DOES OPERATING OUT OF NAME STYLE MAKE CONTRACTOR UNLICENSED?

By Sam K. Abdulaziz  
& Kenneth S. Grossbart  
Abdulaziz, Grossbart, & Rudman

As you may be aware, it is very important for a licensed contractor to conduct business under the proper name – as it is shown on the CSLB records. Failure to do so is a cause for discipline by the CSLB and may prevent a contractor from collecting compensation if they are deemed to be unlicensed because of the incorrect name being used.

The California Courts of Appeal recently heard the case of *David E. Ball v. Steadfast-BLK* which sheds new light on this operating out of name style issue. David E. Ball (“Ball”) was, is, and has been a duly licensed contractor with the CSLB as a sole proprietor. According to the CSLB, Ball has a fictitious name of “Clark Heating and Air Conditioning.” Therefore, the correct name style would be “David E. Ball dba Clark Heating and Air Conditioning” or even “Clark Heating and Air Conditioning.”

Given that nobody is perfect, and mistakes happen, Ball entered into a contract under the name style “Clark Air Conditioning & Heating.” At first glance, it appears to be the same name; at least it contains all of the same words. The name is actually transposed and Ball therefore was operating out of name style. The question at hand is whether this made Ball an unlicensed contractor.

The trial court saw Ball as an unlicensed contractor because of his operating out of name style. They further determined that since he was an unlicensed contractor he could not bring any actions to seek compensation for his work, according to *Business and Professions Code* § 7031(a). Because of this, the trial court ultimately dismissed Ball’s foreclosure on the mechanic’s lien cause of action.

Upon appeal, it was determined that any fictitious business name that Ball was operating his business under would still be “licensed” since Ball was the sole proprietor licensee *not* the fictitious name or dba, since the company is not a legal entity. Note that the CSLB licenses individuals (such as Ball), partnerships, corporations and soon, limited liability companies.

It was further found that even if Ball did break the law as laid out in the *Contractors’ State License Law* that it was not sufficient to disallow him from seeking recovery for work performed. The violations could constitute a technical violation with the CSLB.

Although this decision gives the individual sole owner breathing room with respect to their name style when it comes to recovery, there are various technical violations that still pose a threat. These violations can cause an in depth investigation by CSLB Enforcement Representatives and bring disciplinary actions such as fines, license suspension, and even revocation of the license. The violation could also become public record for all further customers to see and possibly cause them not to enter into a contract.

As simple as it is, it’s always a good idea for any type of contractor to make sure that everything they are doing is under the proper name style. It’s a good foundation for the business.

Sam Abdulaziz has been practicing construction law for over 35 years, and is considered one of the premiere experts in construction law, including California contracting license laws. He is the author of “California Construction Law.” Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 30 years, Ken has become a respected speaker on Mechanic’s Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart and Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at [ksg@agrlaw.com](mailto:ksg@agrlaw.com), or at [www.agrlaw.com](http://www.agrlaw.com)  
JUNE/JULY 2011