

# The Contractors Critic

Reporting on Safety, Productivity and Honesty in the Construction Industry

HAROLD E. NUTTER & SON, INC.

## Bogus 'programs', ripped-off apprentices, company conniving

### WECA tactic harms legit apprenticeship programs

A recent legal ruling in California has heightened fears that some construction companies may be exploiting a bogus "apprenticeship" tactic to cheat unsuspecting employees of their rightful wages.

Subsequent moves by one of

the tactic exploiters, Harold E. Nutter, Inc. only sharpened suspicions that young apprentices pursuing a skill are being mercilessly ripped off by unscrupulous bosses.

Many fear an April 22, 2005 decision by an administrative judge

in the case of *U.S. Department of Labor, OATELS v. California Department of Industrial Relation and California Apprenticeship Council*, case numbers

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## Nutter 'bested' in epic of business conniving

The California electrical construction company, Harold E. Nutter & Son, Inc., was bested in a serial-comic epic of business law birthed in 1988, but did not finally die out until

The curtain went up on this soap opera when Nutter realized it had misplaced — or knowingly kissed good-bye, depending on whom you asked — a quarter of a

dying director, his bereaved missus, multiple lawsuits in state and federal courts, a couple of judges, one fund administrator who wound up in prison, and, of course, scads of lawyers.

Wrongs alleged in this delicious drama were forgery, theft, and misrepresentations of facts.

Wrongs alleged in this delicious drama were forgery, theft, and misrepresentations of facts (called "lies" in the real world).

five years later.

When all lawyers' case files were finally shut, Nutter lost to a widow and her lawyer, but as a two-inch stack of court papers show, it wasn't for lack of appealing.

million dollars connected to a retirement plan for a member of the company's board of directors.

Making appearances in this paperwork stage play were Nutter's chief executive officer, a

Key issues explored included whether one side in a lawsuit can unilaterally fire the attorney for the other side because they didn't trust him and whether the word "actually" meant the same as "irrevocably."

Angels danced for months on that

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# Business conniving

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last legal pinpoint.

Nutter didn't come out looking very good in the any of it, evidenced in large part by its demonstrated lack of business attentiveness and legal sophistication.

The matter was more or less summed up in the complaint *Harold E. Nutter, Inc., Norman Nutter, et al v. Aristides G. Tzikas, Esq., Helen Choate, et al*, filed Aug. 27, 1992 in Sacramento County Superior Court.

As portrayed in that filing, James R. Choate worked for Nutter from April 1973, until he died in January 1989. During that time, he became the secretary of the board of directors at Nutter.

The company had its own retirement plan – the Nutter Plan – which was administered by James R.

“Jay” Nicholson, who was the chief executive of Nicholson Investment Services and a firm known as First California Consultants.

Choate participated in the Nutter Plan for a period of time, until in mid 1988 he met with Nicholson and decided to remove his \$260,448.07 that had accrued in the Nutter Plan account and place it in the Choate's own account on Nicholson's advice.

The logic was, the Nutter complaint said, that those “who were nearing retirement might want to distribute from the Nutter Plan to a ‘self-directed’ account in order to insure the security of the finds through conservative investment.”

The Choates handed the money over to the bank and Nicholson, who allegedly surrepti-

tious added his signature to the authorization documents with the account and proceeded to empty the Choate's account of \$240,000 for his own use in other businesses he controlled.

Nicholson was later convicted of embezzlement charges and sentenced to 10 years in prison. Mrs. Choate was then not only bereft of her husband, but also most of the money. (*Case #529177*)

In her efforts to recover the money, widow Choate engaged attorney Aristides G. Tzikas who pursued a claim for her against the bank, *Choate v. Sunrise Bank of California*, the bank from which Nicholson had purloined the money.

Tzikas later convinced widow  
*Business conniving cont'd, pg 3*

# Apprenticeship programs

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2002-CCP00001 and 2003-CCP-00001 will allow unethical employers to further abuse apprentices.

Although the legal paperwork surrounding the abuse somewhat obscures the problem, it is, at heart, relatively simple.

Federal and state regulatory agencies cooperate in the establishment of apprenticeship programs that allow firms to hire workers at reduced wages on the promise that they will be

trained in a skill and at the end of a specific period be certified as qualified in that skill.

The federal agencies have generally let states set their own rules and standards.

The California dispute arose when state authorities decided to invoke stricter regulations by state agencies.

Some employers and/or employer associations balked. They preferred the federal loophole, which allowed employers and employer associations to set up their own unregulated “private appren-

ticeship programs.”

The principle allegation against these private apprenticeship programs was that some unethical employers could — and did — abuse the system by luring naïve apprentices in with promises that they would gain skills and jobs by completing the program, but expel them for spurious reasons just before they could complete the course.

A new “apprentice” was then lured in to replace the fired

*Apprenticeship programs  
cont'd, pg 3*

# Business conniving

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Choate to accept a negotiated settlement of \$140,000 from the bank on the grounds taxes would eat up the balance anyway. (Case #83106)

This settlement later became the subject of a separate lawsuit begun in Placer County Superior Court, titled *Helen Choate v. Harold Nutter & Son, Inc, et al*, filed Aug. 15, 1991. The et al in that case included lawyer Tzikas. (Case #CIV92-1495)

That case was later moved to U.S. District Court for the Eastern District Court in Sacramento where it became *Choate v. Nutter, et al*. (Case #CIV S-92-1495)

The outcome of that case is not

yet known.

But let's get back to *Nutter v. Choate* in Sacramento County, where we find that after a time Norman Nutter and the company learned of the Nicholsons' theft and



The Choates handed the money over to the bank and Nicholson, who allegedly added his signature to the authorization documents with the account and proceeded to empty it of \$240,000 for his own use.

Mrs. Choate's acceptance of the a settlement with the bank for a lesser amount that the original loss.

Norman Nutter, a trustee of the Nutter Plan, and the company learned of all this in August 1990. They raised allegations of incompetence and fraudulent representation

and other abuses on the Choates part.

"Plaintiffs and each of them certainly and foreseeably would have benefited from the competent and, reasonable exercise of

care and skill ordinarily used in like cases by reputable attorneys...." The Nutter suit against Tzikas claimed.

Nutter totaled up what losses it had suffered and sued Tzikas for \$350,000. This case

*Business conniving cont'd, pg 4*

# Apprenticeship programs

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apprentice and the lower wage scam would begin again, critics reported.

Several apprentices have alleged such a scam is backed by the Western Electrical Contractors Association—Independent Electrical Contractors (WECA-IEC) in which Harold E. Nutter Inc. had been an active participant.

These apprentice-witnesses have declined to be quoted on the record for fear of retaliation.

All this came to light in the battle between the U.S. Depart-

ment of Labor's Office of Apprenticeship Training, Employment and Labor Services (OATELS) which allows—or ignores—abuses the California Department of Industrial Relations (CDIR) and the California Apprenticeship Council (CAC) tried to prevent.

A federal administrative law judge moved April 22, 2005 to "derecognize" California programs that corrected the abuse by unscrupulous employers.

The case erupted in late 1999 when California invoked new state rules to refuse to accept private

apprenticeship programs used by Nutter (and others) and backed by WECA-IEC.

The state argued the OATELS was acting beyond its authority and asked that the feds' claims be rejected.

But a 32-page decision crafted in "yes but no" verbiage essentially sided with the feds, rendering a decision that many say harms legitimate, well-regulated apprenticeship programs.

*Apprenticeship programs cont'd, pg 4*

## Business conniving

*Cont'd from pg 3*

then became mired in a seemingly endless stream of motions and counter motions, demurrers (the legal way for saying “So what?”) and counter arguments all of which basically revolved around the issue whether the statute of limitations had run out on the Nutter claim against Tzikas.

One of the stalling motions a Nutter made late in the game was to fire the attorney representing Choate – an unusual move to say the least.

The only person who can fire an attorney is the party the attorney represents, Sacramento County Superior Court Judge Ronald Robie noted during a March 5, 1993 hearing.

When the Nutter attorney hemmed and hawed a bit more, Robie lost his patience.

“The problem is whether or not you can by motion to compel a party to the lawsuit to substitute their lawyer to raise the issue.

“And in my view is you can’t do that.

“The party is the party and remains the party until there is some judicial determination that they are not the party, so long as they are the party you don’t have the right to compel a substitution of counsel,” Robie admonished.

On March 5, 1993, the judge finally lost his patience and declared the Nutter suit against Tzikas “barred by the statute of limitations.”

## Apprenticeship programs

*Cont'd from pg 3*

WECA hailed the ruling as an “historic move by the Department of Labor and as well as a huge victory for California merit shop contractors.”

However, Nutter has in the meantime reportedly withdrawn from the vaunted WECA-IEC scam set-up and established its

elsewhere.

For instance, WECA’s so-called “Universal Apprenticeship” (UA) program came under fire by the California Department of Apprenticeship Standards in two recent cases, DAS files #05047 and #19602.

A summary of those cases reported that since 1995 the WECA-UA Program gradu-

### Has Harold E. Nutter simply quietly re-established the same sort of pay dodge on its own?

own company-run apprenticeship program, which poses an interesting question.

Did the underlying suspicions raised by the California agencies’ underlying fight against the unregulated private apprenticeship programs hit a nerve?

And — having disassociated itself from the WECA scam publicly exposed by the California legal action — has Harold E. Nutter simply quietly re-established the same sort of pay dodge on its own?

WECA’s devious activities have been similarly attacked

ated a total of 148 apprentices, a total that works out to an average of only 21 graduates per year.

Furthermore, the UA program was legally authorized to operate in only 11 of California’s 58 counties, yet took it upon itself to also operate illegally in the other 47 counties.

“Just looking at the 11 counties where the program legally operated, this figure amounts to *less than one* apprentice graduating annually for each county,” one legal pleading asserted.

For the record, as of December 6, 2005 State Bar of California public records show no punitive actions have ever been taken

against Tzikas. Tzikas has a clean record.

# Nutter's safety record

Harold E. Nutter has been cited at least two other times for violating job safety requirements. The most recent violation of safety laws occurred Feb. 22, 2002 in Brooks, Calif. OSHA initially cited Nutter with three "other" violations noting violations of "rigging equipment for material handling" and "powered industrial trucks" safety laws.

The inspection was closed May 14, 2002. (*Inspection #109350819*).

In October 2000, Nutter was slapped with one "other" citation and fined a whopping \$6,750.

The inspection took place at a Pleasanton, Calif. location. As of publication, the inspection was still marked as "open." No further information was available. (*Inspection #125634972*)

Two Harold E. Nutter workers — an electrician and an apprentice — were injured July 12, 1996 to the extent that the Occupational Safety and Health Administrators (OSHA) inspector described them as "hospitalized."

The inspector working on the original accident reported it this way:

"An electrician and his apprentice were performing electrical maintenance on a 480-volt fused, load-rated circuit breaker. One of the employees used a screwdriver to remove a piece of metal from under one of the fuses. The screwdriver contacted the bus and the frame of the enclosure and caused a phase-to-ground electrical fault. A

*Safety record cont'd on pg 6*

## From the docket

*The following lawsuits are a sampling of Harold E. Nutter & Son's voluminous and varied legal problems. All cases were filed in the Sacramento County (Calif.) Superior Court unless otherwise noted.*

*City of Sacramento v. College Meadows Investors, Harold E. Nutter, et al; Case #95AS00164; Filed 1/11/95*

Harold E. Nutter became entangled in another multiple-defendant legal action brought by local Sacramento governments 1996, this one involving failure to pay taxes.



The city of Sacramento filed a foreclosure action against 39 defendants including College Meadows Investors, Nutter and 37 other parties over two sums of delinquent assessment taxes amounting to about \$31,800.

*City of Sacramento v. College Meadows Investors, Harold E. Nutter, et al*, filed Jan. 11, 1995, sought payment of bond improvement district taxes due for properties involving the Laguna Creek Drive Assessment District.

The years of unpaid taxes stretched from 1989 to 1996. The action was stayed against all defendants by a court order filed July 10, 1995.

*Harold E. Nutter & Son, Inc. v. Larry H. and Elaine Rubenstein; Case #520060; File 4/19/91*

Harold E. Nutter & Son, Inc. sued Larry H. and Elaine Rubenstein in 1991 for the remaining balance of \$69,040 of \$159,410 billed to them for electrical work on a commercial building located on Fulton Avenue in Sacramento, court papers showed.

Vircon Construction, Inc. was named as a co-defendant in the "complaint to foreclose mechanic's lien."

*Nutter v. Rubenstein, et al* was filed April 19, 1991.

Also drawn into the case was D.J. Contractors, which separately petitioned the court to be let out of the case claiming lack of involvement.

Meantime, the Rubensteins and Nutter each asserted that they had insufficient information to respond to the other's complaints and motions.

The Rubensteins additionally claimed they operated in good faith and the whole miserable affair was started because cross-defendant (Vircon) had made false representations to them.

No court papers were available as of Nov. 13, 1991 to determine the outcome of the dispute.

*Harold E. Nutter & Son, Inc. v. Vircon Construction, Inc.; Case #529538; Filed 9/16/92*

Nutter and Vircon were at it again when Nutter filed a verified com-

*From the docket cont'd on pg 6*

## Safety record

Cont'd from pg 5

phase-to-phase electrical fault developed, and the ensuing electric arc burned both employees. They were hospitalized for their injuries. One was released six days later. The other employee was released the next day but had to return for skin grafts.”

The electrician was 27 and the apprentice was 26, OSHA records showed. (*Inspection #125767921*)

## Big money to political candidates

The executives at Harold E. Nutter & Sons are a politically active bunch, records obtained from the California Secretary of State reveal.

It is active enough to require it to obtain its own campaign contribution identification tracking number: #1240823.

Nutter's big money contributions were recorded in 2001, when the generous folks at Nutter gave \$100,000 to the McClintock for Controller campaign committee.

Nutter fed the money to state Sen. Tom McClintock's election outfit in two massive mouthfuls of \$50,000 – one \$50,000 bite on Sept. 27, 2001, and another fifty-grand bite the next day, Sept. 28, 2001 for a 2002 election.

*Big money cont'd on pg 7*

## From the docket

Cont'd from pg 5

plaint for money entitled Harold E. Nutter v. Vircon Construction, Inc. in Sacramento County Superior Court on Sept. 16, 1992.

Also named as a defendant in that money argument was Stephen J. Whichard.

The total amount sought in this case was \$34,000. Legal fees were included in this amount.

Vircon presented financial accountings detailing a list of what it said it had paid.

The parties requested and got a dismissal of the case on undisclosed terms Dec. 13, 1993.

*Harold E. Nutter & Son, Inc. v. D. Benvenuti Company, et al; Case #525593; Filed 2/18/92*

Harold E. Nutter sued prominent Sacramento developer Daniel Benvenuti, Jr. and the D. Benvenuti Company, Inc. in 1992 for \$87,100 for work done in 1991 on commercial property in the 11300 block of Sunrise Park Drive, Ranch Cordova.

The lien action Nutter v. D. Benvenuti Company, et al, was filed in Sacramento County Superior Court on Feb. 18, 1992.

Court papers filed April 14, 1992 showed the parties settled the dispute out of court.

*Harold E. Nutter & Son, Inc. v. Copelands Enterprises, et al; Case #516511; 9/26/90; Sacramento County (Calif.) Superior Court*

Harold E. Nutter & Son v. Copelands' Enterprises, et al, officially filed Sept. 26, 1990 in Sacramento County Superior Court, was a complaint to foreclose a mechanic's lien for \$41,645 plus interest for unpaid work performed on a sports store in the Arden Fair Mall.

*Harold E. Nutter, Inc. v. R.S. Jenkins Company, Inc.; Case #CV504985; Filed 4/18/89*

Notice of a “court structured settlement” in *Harold E. Nutter, Inc. v. R.S. Jenkins Company, Inc.* was filed in Sacramento County Superior Court on April 18, 1989.

The settlement agreement called for payments of \$10,000 each for seven consecutive months starting Jan. 20, 1989, court documents stated.

The suit concerned an alleged breach of contract in which it was said

*From the docket cont'd on pg 7*

## Big money

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Nutter gave McClintock the two large lagniappes in the form of campaign loans, secretary of state records show.

McClintock ran for controller in the 2002 cycle, for governor in 2003, and ran for reelection to the Senate in 2004.

Word has it he's looking at a run for lieutenant governor in 2006.

In that same 2001 reporting cycle Nutter & Sons also tossed \$750 Lauren Hammond's way.

Friends of Lauren Hammond reported getting a monetary donation – “monetary” means cash, check or money order or check – for her try for the Sacramento City Council on Nov. 1, 2001.



## From the docket

Cont'd from pg 6

Jenkins had paid only \$11,384 of a signed contract, with a remaining sum of \$98,971 still owed.

*Harold E. Nutter v. Fabri Company, et al; Case #508595; 5/26/89*

*Harold E. Nutter v. Fabri Company, et al*, filed in the Sacramento County Superior Court on May 26, 1989, was a mechanics lien. Nutter claimed the defendants, among whom were Steven Whichard (cq) and Richard Benvenuti as partners in the Dinmoor Group, still owed \$70,819.25 on an original billing of \$214,836.79 for work done on a commercial office building “commonly known as St. John’s Plaza.”

Nutter was a defendant in a separate mechanic’s lien lawsuit filed about the same time that also involved the Fabri firm.

*Palm Iron Works and Bridge Works v. Fabri Company, Harold E. Nutter, Inc., et al; Case #509319; 11/30/89*

*Palm Iron Works and Bridge Works, v. Fabri Company, Harold E. Nutter Inc., et al*, was filed in the Sacramento Superior Court on Nov. 30, 1989. Palm Iron wanted \$69,968 in that go-round.

Nutter’s other suit with Fabri was settled for undisclosed terms and dismissed by the court May 29, 1990, records showed.

## Nutter’s shoddy work ruins environmental samples

Nutter & Son was itself sued in 1997 by Travelers Indemnity Company for some \$178,000 in damages it caused at an environmental laboratory in Sacramento.

In that case, Nutter was accused of sloppy workmanship that resulted in the loss of refrigeration at Quanterra Environmental Laboratories (then known as Enesco) on July 14, 1994.

Ordinarily, when a fridge goes out the orange juice and milk might be spoiled, but in this case,

a circuit breaker Nutter workers “negligently tripped” resulted in the loss of power to “Room No. 114 causing the environmental analysis samples to spoil in said room.”

In California, to speed up court work, some cases can opt to go to an arbitrator and have him or her decide who’s right and how much they deserve to get.

Nutter agreed to have an arbitrator rule on this case, but two weeks later, after a hearing

on Sept. 3, 1998, Nutter formally rejected the arbiter’s decision and asked on Sept. 18, 1998 for a new trial, putting the matter once again in low gear.

Of course, Nutter’s rejection of the decision and its request for a new trial went entirely against the whole spirit of arbitration.

The case was dismissed with prejudice by the plaintiffs on April 20, 2000. (*Case #97AS03556*)

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# Source Notes

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## LITIGATION:

**U.S. Dept. of Labor, Office of Apprenticeship Training, Employment and Labor Services v. Calif. Dept. of Industrial Relations and Calif. Apprenticeship Council**; Case #2002-CCP-00001, 2003-CCP-00001; Issue Date 4/22/05 U.S. Dept. of Labor, OALJ.

**Harold E. Nutter, Inc., Norman Nutter, et al. v. Aristides G. Tzikas, Helen Choate, et al**; Case #529177; Filed 8/27/92.

**Choate v. Sunrise Bank of Calif.**; Case #83106; Filed 1/11/97.

**Helen Choate v. Harold E. Nutter, Inc.**; Case #CIV. S-92-1495.

**City of Sacramento, Calif. v. College Meadows Investors, LTD, et al**; Case #95AS00164; Filed 1/11/95.

**Harold Nutter, Inc. v. Larry H. Rubenstein, Elaine Rubenstein, et al**; Case #520060; Filed 4/19/91.

**Harold E. Nutter, Inc. v. Vircon Construction, Inc.**; Case #52938; Filed 9/16/93.

**Harold E. Nutter, Inc. v. D. Benvenuti Company, Inc.**; Case #525593; Filed 2/18/92.

**Harold E. Nutter & Son, Inc. v. Copelands' Enterprises, Inc.**; Case #516511; Filed 9/26/90.

**Harold E. Nutter v. R.S. Jecnkins Company, Inc.**; Case #504985; Filed 4/18/89.

**Harold E. Nutter, Inc. v. FABRI Company**; Case #508595; Filed 5/26/89.

**Palm Iron and Bridge Works v. FABRI Company**; Case #509419; Filed 11/30/89.

**Travelers Indemnity Company v. Harold E. Nutter & Son, Inc., et al**; Case #97AS03556; Filed 7/11/97; Sacramento County (Calif.) Superior Court

## OSHA:

*OSHA Information obtained through OSHA website:*

*http://www.osha.gov*

**Inspection #109350819**; 2/22/02; Brooks, Calif.

**Inspection #125634972**; 10/4/00; Pleasanton, Calif.

**Inspection #125767921**; 7/12/96; Sacramento, Calif.

## MISCELLANEOUS:

**The State Bar of California**; Attorney Search; Aristides George Tzikas; #85822. State Bar of CA website: <http://members.calbar.ca.gov>.

**Western Electrical Contractors Association (WECA-IEC)** website; <http://www.weca-iec.org>.

**California Secretary of State**; Cal-Access Campaign Finance Activity; Harold E. Nutter & Son Electrical Contracting. Cal-Access web site: <http://cal-access.ss.ca.gov/Campaign/Committees>.

**KTVU News Election 2002 Coverage**; KTVU website: <http://www.netelection.org/ktvu/Candidates/Controler/Donors.asp>.

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*The information contained in The Contractor's Critic does not reflect a complete history of the business practices of Harold E. Nutter & Son, Inc. and/or its related companies. LASER is publishing information that contractors do not and will not publish about themselves. LASER has relied on the public record to present this information to the public in an effort to promote safety, productivity, honesty, and environmental compliance in the construction industry.*

*Harold E. Nutter & Son, Inc. has been given the opportunity to review this material for errors and inaccuracies. As of publication, Harold E. Nutter & Son, Inc. has not made any specific suggestions or refuted any specific information in this publication.*

*LASER, Inc. will continue to seek and publish additional data.*

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