

**STATE OF ALABAMA BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**



IN THE MATTER OF:

Stephen P. Maslan
8011 Paseo Blvd. # 201
Kansas City, Missouri 64131

Respondent

Case No. 2013-26-B

FINAL ORDER

On April 21, 2014 a hearing was convened concerning the allegations filed against Respondent, Stephen P. Maslan. The Board was represented by Mr. Benjamin Albritton, Board Counsel. Administrative Law Judge Dana A. Billingsley presided over the Hearing. Mr. Maslan appeared at the hearing without legal Counsel.

After hearing the testimony of all the witnesses presented by the Board Investigative Committee and after considering all the evidence presented in the above-referenced case, Administrative Law Judge Dana H. Billingsley proposed the following Findings of Fact, Conclusions of Law, and Conclusion and Recommendation.

PROPOSED FINDINGS OF FACT

1. Respondent Stephen Maslan is a licensed Professional Engineer ("PE"), license number 16272, and was so licensed at all times relevant to the matters stated herein. (Tr. 12); (BE #J-1). Respondent's license was originally issued on September 12, 1987, and is current through December 31, 2014. There have never been any actions taken against Respondent's PE license in Alabama. (Tr. 12).

2. On June 25, 2013, the Board's Executive Director, Regina Dinger, initiated a Complaint against Respondent, alleging that he had violated ALA. CODE § 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)(1) and -.08 (2013) by having his license to practice engineering revoked by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects (the "Missouri Board") for failure to comply with the terms of discipline set forth in a November 6, 2009 Order. (BE #J-1).

3. The Board's Complaint was assigned Case No. 2013-26-B and was sent to Respondent's address of record via correspondence dated June 26, 2013, by First Class and Certified Mail. (Tr. 15); (BE #3). The Board's letter requested a response to the Complaint, including copies of the documents related to the disciplinary action taken against Respondent by the Missouri Board and those relative to any action taken against Respondent in any other jurisdiction, by August 10, 2013. (BE #3).

4. Respondent faxed correspondence to the Board office on June 24, 2013, which included a copy of a July 31, 2012 Final Order from the Kansas State Board of Technical Professions (the "Kansas Board") placing Respondent on probation for two (2) years and assessing a fine of \$25,000.00 for gross negligence, incompetency, misconduct or wanton disregard for the rights of others regarding the design, preparation and sealing of plans and specifications for fire alarm systems for two buildings in Salina, Kansas. (BE #10, 10A). Also enclosed was a copy of the May 30, 2013 Decision and Order of the Missouri Board revoking Respondent's PE license for violation of the terms of its November 6, 2009 order placing Respondent on probation and a February 1, 2013 notice from the Mississippi Board of Licensure for Professional Engineers and Land Surveyors,

requiring Respondent to attend a formal show cause hearing to renew his PE license due to the Kansas Board's action or leave his Mississippi license in lapsed status. (BE #10).

5. On July 17, 2013, Respondent provided further correspondence to the Board by facsimile summarizing the disciplinary actions taken against him in other states to date. (BE#11). These additional actions include the following:

On October 22, 2009, Respondent entered into a Settlement Agreement with the Missouri Board for incompetence and gross negligence in placing his PE seal on architectural documents and was placed on probation for five (5) years, beginning November 6, 2009.

In response to the action of the Missouri Board, the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (the "Kentucky Board") imposed a probationary term on Respondent concurrent with that of the Missouri Board and assessed a \$1,000.00 fine.

On March 19, 2010, the State of New Hampshire Board of Professional Engineers imposed a \$2,500.00 fine on Respondent for failure to disclose the Missouri Board's disciplinary action.

On September 15, 2010, the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects fined Respondent \$350.00 and placed him on probation, to run concurrent with the action taken by the Missouri Board.

On September 24, 2010, the Kansas Board entered into a Settlement Agreement and Consent Order with Respondent for the 2009 violations in Missouri and placed him on probation until such time as he successfully completed the probation requirements set forth in the 2009 Missouri Settlement Agreement.

On January 20, 2011, the Georgia State Board of Registration for Professional Engineers and Land Surveyors placed Respondent on probation, to run concurrent with the probationary period in Missouri.

On September 29, 2011, the Indiana State Board of Registration for Professional Engineers and Land Surveyors placed Respondent on probation, to run concurrent with the Missouri probation.

On October 13, 2011, the Engineering Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors for the State of Wisconsin took disciplinary action against Respondent due to the Missouri action and fined him \$870.00.

On March 9, 2012, the North Carolina Board of Examiners for Engineers and Surveyors (the "North Carolina Board") reprimanded Respondent and restricted him from practicing building design for failure to disclose the Missouri probation.

On May 20, 2013, the Texas Board of Professional Engineers (the "Texas Board") placed Respondent on probation due to the action taken by the Kansas Board, assessed a \$1,710.00 administrative penalty and required successful completion of online Intermediate Studies in Engineering Ethics course offered by the National Institute for Engineering Ethics at Texas Tech University.

On June 5, 2013, the Iowa Engineering and Land Surveying Examining Board placed Respondent on probation due to the discipline imposed by the Kansas Board.

On July 12, 2013, the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (the "Oklahoma Board") suspended Respondent's PE license for two (2) years and ordered him to complete the Texas ethics course.

6. By Notice dated March 18, 2014, Respondent was notified via Certified and First Class Mail of the date and time of a public hearing to be held concerning his alleged violations of the Board's licensure act and administrative rules, which were specified in detail in the Board's Charges accompanying the Notice. (Tr. 18); (BE #1). The Board's Charges Amended were signed by the Executive Director on March 18, 2014, and contained a single charge of Unethical Conduct – Disciplinary Action in Another Jurisdiction. (BE #2). In particular, the Board alleges that on February 24, 2014, the Missouri Board stayed the revocation of Respondent's PE license and placed him on probation for a period of five (5) years related to the Kansas Board's Order of July 31, 2012. The Board's Charges further allege that on July 10, 2013, the Oklahoma Board reprimanded and suspended Respondent's PE license for two (2) years and required him to pay a \$3,000.00 fine and complete an online engineering ethics course offered by the National Institute for Engineering Ethics at Texas Tech University. (BE #2).

7. The Board's Charges allege that these actions constitute violations of ALA. CODE § 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)1, and 5. (2013), violation of the rules of professional conduct or misconduct in the practice of

engineering, and ALA. CODE§ 34-11-11(a)(5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2013), which permit the Board to take disciplinary action, including revocation, suspension or the levy of an administrative fine, against a licensee for committing an offense in another jurisdiction that resulted in the revocation, suspension or voluntary surrender, to avoid disciplinary proceedings, of a license or certificate of licensure, including any agreement or stipulation executed in order to avoid formal disciplinary proceedings. (BE #2).

8. The Notice and Board's Charges complied in all respects with the requirements of ALA. CODE§ 41-22-12 (1975 as amended) and ALA. ADMIN. CODE r. 330- X-16-.03 (2013) and sufficiently apprised Respondent of the nature of the charges against him and of the date, time and place of the hearing. (BE #2).

9. The Board solicited testimony from the following individuals at the hearing: Executive Director Regina Dinger; William R. Huett, Assistant Executive Director and Chief Investigator; and Board Investigator Robert Herbert. The Board introduced thirteen (13) exhibits at the hearing, which were admitted into evidence. Respondent appeared at the hearing and provided testimony on his own behalf, but did not offer any documentary evidence for the record.

10. Ms. Dinger testified regarding the issuance of the Complaint, the Board's Charges and the March 18, 2014 Notice to Respondent informing him of the Charges and of the date, time and place for the hearing. (Tr. 14-18); (BE #J-1, 2). The Board became aware of the Missouri Board's actions against Respondent through the National Council for Examiners of Engineers and Surveyors ("NCEES"), which maintains a database that includes violations reported by other states regarding the Board's own licensees. (Tr. 12-13, 25-26). Ms. Dinger stated that the Board opened a Complaint against

Respondent regarding the matters reported through NCEES in June 2013, which was forwarded to the Board's investigator. The Investigator then provides a report of his findings to the Investigative Committee for review, and the Committee provides a recommendation as to how the matter should proceed. (Tr. 14-17). In the event the Committee recommends that the Board proceed with a formal enforcement action, Ms. Dinger stated that she prepares the Charges, which are also forwarded to the respondent. (Tr. 17-18); (BE #2).

11. Mr. Huett testified that once a Complaint is opened by the Board's Executive Director, he is responsible to investigate the Complaint. In this case, the Board's paralegal did the initial intake work and drafted the June 26, 2013 letter to Respondent, which included a copy of the Complaint. (Tr. 22); (BE #3). Mr. Huett then assigned the case to the Board's Investigator, who provided the results of his investigation to the Investigative Committee assigned to this matter. (Tr. 23-24). In particular, Mr. Huett stated that NCEES posted the Missouri Board's action placing Respondent on probation. Respondent was also disciplined in Kansas for violations unrelated to the Missouri Board's actions and fined over \$20,000.00, which generated the revocation of his PE license in Missouri. Likewise, Respondent was disciplined for an unrelated violation in Oklahoma and signed a consent agreement to suspend his license. (Tr. 26-28); (BE #2).

12. Mr. Huett stated that Ms. Cherry Costello provided additional updates on behalf of Respondent, including his appeal of the Missouri Board's action revoking his PE license. (Tr. 26). The Missouri courts remanded Respondent's case back to the Board for further action; on remand, the Board rescinded the revocation and placed Respondent's PE license on probation. (Tr. 27, 29). On April 14, 2014, Ms. Costello apprised the Board that on March 19, 2014, the State of Rhode Island and Providence Plantations Department of

Business Regulation (the "Rhode Island Board") revoked Respondent's license based in part upon the Missouri and Oklahoma Board actions and in part on Respondent's failure to disclose on his July 8, 2013 renewal application other disciplinary actions filed against him in New Hampshire, North Carolina, Kentucky, Indiana, Georgia, Wisconsin, Colorado and/or Virginia. (Tr. 30-32); (BE #4). Ms. Costello also provided a copy of Respondent's objections to the Rhode Island Board's Default Judgment and Decision, dated March 28, 2014. (Tr. 30, 32); (BE #4).

13. On April 14, 2014, Ms. Costello also provided a copy of the Kentucky Board's Consent Decree dated April 4, 2014, which placed Respondent's PE license on probation until such time as his license is either revoked by the Kentucky Board or he has satisfied the terms of his probation of the revocation of his Missouri PE license under the Missouri Board's Order of February 24, 2014. (Tr. 33, 35); (BE #5). The Consent Decree also limits Respondent's practice to structural and civil engineering in the state of Kentucky. (BE #5).

14. Ms. Costello provided additional information related to actions taken against Respondent by the states of Pennsylvania, Idaho, Rhode Island, North Carolina and Wyoming. (Tr. 36, 38-39); (BE #6). In particular, on March 14, 2014, the Commonwealth of Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists placed a public reprimand on Respondent's PE license and assessed a fine of \$1,000.00 due to the Kansas Board's disciplinary action. (Tr.38): (BE #6). On November 15, 2013, the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors accepted a Stipulation and Consent Order suspending Respondent's PE license until such time as Respondent is no longer on probation or suspension status with any other state. (Tr. 38); (BE #6).

15. On December 2, 2013, the Rhode Island Board notified Respondent that it was denying his renewal application based on his suspensions in Kansas, Missouri and Oklahoma. (Tr. 38); (BE #6). Consistent with the February 19, 2014 action of the Missouri Board, on March 27, 2014, the North Carolina Board restricted Respondent's practice of engineering to civil and structural engineering so long as he is restricted by the Missouri Board and will suspend, revoke or refuse to renew or reinstate his license should the Missouri Board impose such action as a result of violation of probation. (Tr. 38-39); (BE #6). Lastly, on April 4, 2014, the Wyoming Board of Professional Engineers and Professional Land Surveyors placed Respondent's PE license on probation for the minimum duration of the Missouri Board's probation, which is in place until February 23, 2019, and restricted Respondent's practice to structural and civil engineering. (Tr. 39); (BE #6).

16. Mr. Herbert testified that he conducted a telephone interview with Respondent on July 19, 2013, and Respondent was cooperative and forthcoming during the investigative process. (Tr. 59-61). Mr. Herbert also assimilated the following documents: the May 30, 2013 Order of the Missouri Board revoking Respondent's PE license (BE #7); the October 22, 2009 Settlement Agreement with the Missouri Board placing Respondent's license on probation for five (5) years for engaging in the unauthorized practice of architecture (BE #8); the Kansas Board's Final Order of July 31, 2012, placing Respondent on probation for two (2) years and assessing a fine of \$25,000.00 for gross negligence, incompetency, misconduct or wanton disregard for the rights of others regarding the design, preparation and sealing of plans and specifications for two (2) fire alarm systems in Salina, Kansas (BE #9); and the Oklahoma Board's Formal Notice of Charges filed June 10, 2013 (BE #12), and its Consent Order of July 12, 2013, suspending

Respondent's PE license for two (2) years and ordering him to complete the Texas Tech University ethics course mandated by the Texas Board (BE #13). (Tr. 45-51, 55-58).

17. On cross-examination, Mr. Herbert stated that he has investigated numerous other cases resulting from disciplinary actions taken against reciprocal licensees in other states. Based on his experience, it is not unusual for states to take action against a licensee based on other states' actions. It is a violation of Alabama law for a licensee to be disciplined in another state. (Tr. 62-65).

18. Respondent testified that the actions taken against him in other states resulted from the actions of the Missouri, Oklahoma and Kansas Boards and that the Board should be restricted to a review of these actions. With regard to the Rhode Island Board, Respondent stated that he was misled into believing that he would automatically be suspended if he did not attend the hearing set before that Board, and he intends to appeal the Board's decision. (Tr. 66, 70).

19. Respondent stated that his father was an engineer and an architect and that he has spent his entire life immersed in the engineering profession. He loves what he does, and his employees have been with him for over twenty (20) years. Respondent said that he made a mistake by not retaining an attorney to represent him before the Kansas Board, and he was uncertain as to whether all the pertinent facts were properly before the Board. He is now trying to get all of the information regarding each state action to all the other states in which he is licensed, and he is hopeful that Alabama will follow Missouri's lead and only place him on probation so that he can continue to do work in this state, which consists primarily of work on metal buildings and for nail salons and Chinese restaurants. (Tr. 66, 68-71). Respondent testified that he does not work outside the level of his expertise and that he takes additional continuing education courses in order to remain compliant

with changing building codes and designs. He stated that he is completing the Texas Tech University ethics class and that the Florida Board of Professional Engineers (the "Florida Board") recently placed his license on probation and restricted him only from the design of fire alarm systems. Respondent has resubmitted his application to Mississippi, and that Board is scheduled to meet May 6, 2014. He is the sole wage earner for his household. (Tr. 71-73).

20. On cross-examination, Respondent clarified that the action taken by the Florida Board was in response to the Missouri and Kansas Board actions. He stated that Texas is waiting for him to complete their ethics class, and an action by the Massachusetts Board of Registration of Professional Engineers and Professional Land Surveyors is pending. (Tr. 74-76).

PROPOSED CONCLUSIONS OF LAW

1. The Alabama Legislature created the State Board of Licensure for Professional Engineers and Land Surveyors for the purpose of safeguarding life, health and property and promoting the public welfare with regard to the practice of engineering within the state. ALA. CODE§ 34-11-2(b) (1975 as amended).

2. The Board is empowered to reprimand, censure, fine or place on probation any licensed professional engineer or to suspend, refuse to renew or revoke the certificate of any licensee for violation of the rules of professional conduct prescribed by the Board, misconduct in the practice of engineering or engaging in any conduct that discredits or tends to discredit the profession of engineering. ALA. CODE§

34-11-11(a)(2) (1975 as amended); ALA. ADMIN. CODE r. 330-X-14-.06(a)1. and 5. (2013). Consequently, the Board may take action against any licensee as the result of an offense in another jurisdiction resulting in the revocation, suspension or voluntary surrender, to avoid disciplinary proceedings, of a license, including any agreement or stipulation entered into by a licensee in lieu of formal disciplinary proceedings. ALA. CODE § 34-11-11(a)(5) (1975 as amended); ALA. ADMIN. CODE r. 330-X-14-.08 (2013).

3. Respondent's PE licenses have recently been revoked in Rhode Island and Idaho, and his license remains suspended in Oklahoma through July 12, 2015; he is on currently probation in another ten (10) states. Most of the actions taken against Respondent occurred pursuant to provisions in the other states' licensing laws similar to that of ALA. CODE § 34-11-11(a)(5) (1975 as amended). However, the undersigned finds that Respondent's assertions that all of the actions against him stemmed from the actions taken by Missouri, Kansas and Oklahoma is not supported by the evidence. The disciplinary actions taken against Respondent in the remaining states have been initiated by Respondent's failure to report actions taken against his licenses in other jurisdictions, which constitutes an ethical violation, and his practice of engineering has been restricted in North Carolina, Florida, Wyoming and Kentucky.

4. The undersigned also has grave concerns regarding the Kansas Board's findings in 2012, regarding Respondent's design, preparation and sealing of plans and specifications for two (2) fire alarm systems (BE #9, 10, 10A), and Respondent's actions in Missouri in 2009 for stamping architectural documents (BE #8). Respondent did not provide any testimony regarding either of these actions, which were found to constitute incompetency, gross negligence and misconduct in the practice of engineering by the Kansas and Missouri Boards.

CONCLUSION AND RECOMMENDATION

1. It is incumbent upon a licensee to be familiar with the requirements under Alabama law and the Board's own rules and regulations governing the practice of the profession of engineering, including the Rules of Professional Conduct, which prohibit the licensee from violating any provision of Alabama law regulating the practice of engineering and engaging in any conduct that discredits or tends to discredit the practice of the profession of engineering. *See* ALA. ADMIN. CODE r. 330-X-14-.06(a)1. and 5. (2013).

2. Respondent has committed violations of the PE licensure laws and regulations in a number of states, including Colorado, ¹Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Texas, Virginia, Wisconsin and Wyoming, which constitute violations of Alabama law regulating the practice of engineering, pursuant to ALA. CODE §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2013), including the Rules of Professional Conduct. He has never had any disciplinary action taken against his license in Alabama.

3. As shown above, on the basis of the evidence of record and the testimony presented, it is hereby concluded that Respondent's conduct constitutes violations of ALA. CODE §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)1. and 5. and -.08. (2013).

The Oklahoma Board's Formal Notice of Charges (BE #12) and Consent Order of July 12, 2013 (BE #13) reference disciplinary actions taken against Respondent in Colorado; however, no testimony was provided by Respondent regarding any actions taken against his license by the Colorado State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors.

4. Accordingly, it is hereby recommended that Respondent's license to practice the profession of engineering in the State of Alabama be SUSPENDED for a period of two (2) years, to be followed by a probationary period concurrent with that imposed by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects, in accordance with ALA. CODE §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN.CODE r. 330-X-14-.08 (2013). The undersigned further recommends that a fine of \$2,500.00 be imposed on Respondent, in accordance with ALA. CODE§ 34-11-11(i) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2013), said fine to be paid within thirty (30) days of the date of a Final Order issued by the Board.

ORDER

The Board, after deliberation and review, agrees with and adopts as final the Findings of Facts, Conclusions of Law and Conclusion and Recommendation proposed by Administrative Law Judge, Dana H. Billingsley.

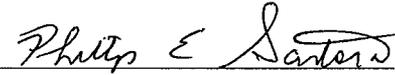
The Board hereby finds Respondent ***GUILTY*** of the allegations made against him and hereby ***ORDERS*** as follows:

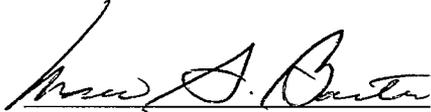
1. Respondent's professional engineer license is suspended for two years to be followed by a probation period concurrent with that imposed by the Missouri Board of Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects. Respondent shall ***cease and desist*** any and all acts constituting the practice of, or offer to practice of engineering in the State of Alabama during the time is license is suspended.
2. Respondent shall submit to the Board via check or money order a fine of Two Thousand Five Hundred Dollars (\$2,500.00) made payable to the PE & LS Fund within thirty (30) days of

the date of the Final Order.

3. Respondent shall submit to the Board via a check or money order made payable to PE & LS Fund \$1,532.60 (One Thousand Five Hundred & Thirty-Two dollars and Sixty cents) for the cost of hearing within thirty (30) days of date of Final Order.

ENTERED this the 18th day of June, 2014


Phillip E. Santora


Marc S. Barter


Frazier Christy


Daniel S. Turner

DID NOT ATTEND

Earl R. Foust


Charles P. Willis

RECUSED

Liz Hyde