

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

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

Complainant,
vs.

**WILLIAM M. VARNON
526 COTTONDALE DRIVE
HUEYTOWN AL 35023**

Respondent.



**Case No. 2017-20-C
Case No. 2017-30-C
Case No. 2017-31-C**

HEARING ORDER

On March 26, 2018, a hearing was convened concerning the allegations filed against Respondent, William M. Varnon. The Board was represented by Mr. Benjamin Albritton, Board Counsel, and Administrative Law Judge Dana H. Billingsley presided over the hearing. Respondent appeared without Counsel.

After hearing the testimony of witnesses and considering the evidence presented, Administrative Law Judge Billingsley proposed the following Findings of Fact, Conclusions of Law, Conclusion and Recommendations.

PROPOSED FINDINGS OF FACT

1. Respondent William M. Varnon was a licensed Professional Land Surveyor ("PLS"), license number 9324. (BE #1). Respondent's license was revoked by the Board effective February 1, 2017, for failure to abide by the terms and conditions of a 2016 Consent Agreement between Respondent and the Board and remained revoked at all times relevant to the matters stated herein. (Tr. at 27-28); (BE #11).

2. On or about April 4, 2017, the Board received a Complaint regarding Respondent from Ms. Linda Shelton, Broker/Manager for RealtySouth in McCalla, Alabama, who alleged that Respondent conducted land surveys for RealtySouth on several occasions following the suspension of his PLS license and failed to inform RealtySouth of his suspension. (Tr. at 13-14); (BE #1). On or about September 5, 2017, a second Complaint was filed by Mr. Philip Richardson,

a review/enforcement official with the Jefferson County Department of Development Services, who alleged that Respondent prepared and sealed two site survey drawings on August 22, 2017, in support of an application for an on-site sewage disposal permit, while his license was revoked, in violation of state law. (Tr. at 15); (BE #2).

3. On or about September 8, 2017, Mr. Steven M. Allen, an Alabama licensed PLS, filed an additional Complaint with the Board, alleging that Respondent used his signature and seal without permission on the plat submitted to Mr. Richardson in support of the sewage disposal permit application referenced in BE #2. (Tr. at 16); (BE #3).

4. Ms. Shelton was notified on April 12, 2017, of the receipt of her Complaint by the Board. (BE #5). Mr. Richardson was notified by letter dated September 5, 2017, of the receipt of his Complaint (BE #7); and Mr. Allen was notified by letter dated September 12, 2017, of the receipt of his Complaint (BE #9).

5. On April 12, 2017, the Board's Executive Director, William R. Huett, notified Respondent of Ms. Shelton's Complaint and requested that he provide a response thereto by April 28, 2017. (BE #6). Respondent was notified further of Mr. Richardson's Complaint by letter dated September 8, 2017, and was asked to provide a response by September 22, 2018 (BE #8); and by letter dated September 12, 2017, Respondent was notified of Mr. Allen's Complaint and was asked to provide a response by September 28, 2017 (BE #10). Respondent did not provide a response to the Board regarding any of these Complaints. (Tr. at 23, 71).

6. By Notice dated February 5, 2018, 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 ALA. CODE § 34-11-16(a)1. (1975 as amended) — engaging in the practice of land surveying without being licensed; and ALA. CODE § 34-1 1-16(a)3. (1975 as amended)¹ — presenting or attempting to use the certificate of licensure or seal of another licensed land surveyor, which were specified in detail in the Board's Charges accompanying the Notice. (BE #4). The Board's Charges were signed by its Executive Director on February 5, 2018, and bore eight counts related to ALA. CODE

¹ Judge Billingsley noted that on April 6, 2018, Governor Kay Ivey signed Alabama Act 2018-550 into law, which amended the provisions of ALA. CODE §34-11-1, et seq.; however, ALA. CODE § 34-1 1-16(a)1. and (a)3. were properly cited by the Board as the statutory provisions in effect at the time of the incidents specified in the Notice and at the time of the hearing.

§ 34-11-16(a)1., occurring on or about February 16, 2017, February 28, 2017, March 1, 2017, March 2, 2017, March 10, 2017, March 21, 2017 and August 22, 2017; and two counts related to ALA. CODE § 34-11-16(a)3., occurring on or about August 22, 2017. *Id.*

7. 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. 330X-16-.03 (2016) and sufficiently apprised Respondent of the nature of the charges against him and of the date, time and place of the hearing. *Id.*

8. The Board solicited testimony from the following individuals at the hearing: Executive Director William R. Huett; Ms. Linda Shelton; Mr. Steven Allen; and Board Investigator Robert Herbert. Respondent appeared pro se at the hearing and testified on his own behalf.

9. Mr. Huett testified regarding the Board's Charges and the February 5, 2017, Notice to Respondent informing him of the Charges and of the date, time and place for the hearing. (Tr. at 20-21); (BE #4). Once a Complaint is received by the Board, it is assigned to an Investigator, who provides a report to the Board's Investigative Committee to assist in the Committee's determination of probable cause that a violation of the Board's law or rules occurred, for which the Board's charges will issue. (Tr. at 17-20); (BE #4). Mr. Huett confirmed that the Board took disciplinary action against Respondent in 2016 due to standards of practice violations in his surveying work. Respondent and the Board entered into a Consent Agreement in settlement of those violations; however, Respondent did not comply with the terms of the Consent Agreement, and his license to practice land surveying was revoked by the Board effective February 1, 2017. (Tr. at 27-29); (BE #11). Respondent was notified of the revocation of his license by letter issued by the Board's former Executive Director, Regina Dinger, on February 8, 2017, by First Class and Certified Mail. (Tr. at 30); (BE #12). Respondent received his notice of revocation via Certified Mail on February 11, 2017. (Tr. at 30-31); (BE #13).

10. Mr. Huett stated that Respondent filed an application for reinstatement of his PLS license on or about March 3, 2017, which included a copy of his 2016 Consent Agreement, the Board's order of revocation and a copy of the letter notifying him that his license had been revoked. (Tr. at 31-32); (BE #14). Respondent's application for reinstatement was denied by the Board on March 23, 2017, following a public hearing in which Respondent participated. (Tr. at 33-35); (BE

#15, 16). Respondent's application expressly stated that he had not done any surveying work since his license had been revoked. (Tr. at 36); (BE #16).

11. Ms. Shelton testified that RealtySouth had employed Respondent on several occasions previous to February 1, 2017, to provide surveys of residential properties sold by the company's agents. She stated that she filed the Complaint after the agents informed her that they had heard that Respondent's license had been suspended. She then called the Board office to inquire about the status of Respondent's license and learned of the revocation. She stated that Respondent never informed anyone at RealtySouth that his license had been revoked effective February 1, 2017. In support of her Complaint, Ms. Shelton provided copies of all the surveys that Respondent conducted after February 1, 2017, for which he was paid by either the buyer or the seller of the properties. (Tr. at 39-44); (BE #17). The properties were located on Eastern Valley Road, 1232 Thirteenth Street, 111 Ray Avenue, 157 Highwood Drive, 210 EV Road, 2395 Birch Lane, and 3292 Hilltop Road Southeast, for which Respondent invoiced charges totaling \$1,680.00. (Tr. at 44-46); (BE #17).

12. Respondent stated that Ms. Shelton's testimony was true, and he had no questions for her on cross examination. (Tr. at 47).

13. Mr. Allen testified that he filed his Complaint with the Board after Mr. Richardson called to inform him that a final subdivision (record) plat bearing his name and seal, dated September 7, 2017, had been submitted to the Jefferson County Department of Development Services, which he did not sign or stamp. (BE #18, 19). Mr. Allen stated that he never gave Respondent permission to use his name on any projects, and he was unaware of any action taken against Respondent's license until August 2017. (Tr. at 50-55). An additional boundary survey for the same property, bearing Respondent's seal, was submitted to Jefferson County in support of an on-site sewage disposal permit on or about August 22, 2017. (BE #20).

14. Mr. Herbert testified that Mr. Richardson was unavailable to testify at the hearing because he had undergone a serious medical procedure; however, Mr. Richardson provided him with a detailed e-mail on September 8, 2017, in support of the Complaint he filed with the Board. (BE #2, 22). On October 18, 2017, Mr. Richardson also provided copies of two applications for on-site sewage disposal permits submitted to the Jefferson County Department of Public Health one dated August 22, 2017, bearing Respondent's signature and seal, and a duplicate application

dated on or about September 11, 2017, bearing Mr. Allen's name, registration number and signature ("S. M. Allen"), without a seal. (BE #21, 23).

15. Mr. Herbert stated that Respondent would not provide an interview or a response to any of the Complaints. (Tr. at 71). Mr. Herbert attempted to contact Respondent several times by telephone, e-mail, Certified Mail and regular mail regarding receipt of the Complaints, as well as regarding the upcoming hearing. *Id.*

16. In response to questions from the Board, Mr. Herbert stated that he could not opine as to whether Respondent understood the gravity of his situation, but he appeared to have understood the process, explaining that he could not provide a timely response to the Complaints due to problems with his eyesight.

17. Respondent testified that he retired from U.S. Steel in 1991 after thirty eight years of service to that company as a land surveyor and worked independently until 2015, when he began having significant problems with his eyesight. He admitted to conducting the RealtySouth surveys while revoked, but stated that the surveys were foundation surveys requested before the date of his license revocation, which he simply finalized after February 1, 2017. Respondent stated that he signed Mr. Allen's name and used his seal because the two men had previously swapped signatures, and he could not reach Mr. Allen to obtain his permission to do so in advance of the due date for those documents. (Tr. at 73-78). He said he needed Mr. Allen's signature because his "wasn't any good." (Tr. at 77).

18. In response to questions from the Board, Respondent clarified that he and Mr. Allen had a longstanding agreement to sign for each other, and permission to do so was not always required in advance. (Tr. at 79). Respondent stated that he appreciated the seriousness of this matter and that he was no longer practicing surveying, due to his age and eyesight. (Tr. at 80-81).

PROPOSED CONCLUSIONS OF LAW

1. The Alabama Legislature has created the Alabama 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 land surveying within the state. ALA. CODE § 34-11-2(c) (1975 as amended). In particular, it is unlawful for anyone to use an expired, suspended, surrendered, lapsed, or revoked certificate or seal or facsimile thereof (ALA. CODE S 34-11-7(d) (1975 as amended)) or to engage in the practice of land surveying without being

licensed (ALA. CODE § 34-11-16(a)1. (1975 as amended)). It is also unlawful for any person to use the certificate of licensure or seal of another Professional Land Surveyor ("PLS"). ALA. CODE § 34-11-16(a)3. (1975 as amended).

2. The Board is empowered to assess a civil penalty against any non-licensed person found guilty of engaging in the practice of land surveying in this state without being licensed and for presenting or attempting to use the certificate of licensure or the seal of another licensed land surveyor. ALA. CODE § 34-11-16(a)1. and (a)3. (1975 as amended). The amount of the civil penalty shall not exceed two thousand five hundred dollars (\$2,500) for each and every separate offense. ALA. CODE § 34-11-16(b) (1975 as amended).

3. Respondent admits that he willfully and knowingly practiced land surveying following the effective date of the revocation of his PLS license on February 1, 2017, and continued to provide land surveying services following the Board's denial of his request for reinstatement of his license in March 2017. His testimony regarding his use of Mr. Allen's name and PLS seal pursuant to a verbal agreement with Mr. Allen both contradicts Mr. Allen's testimony and fails to absolve him of the violations with which he has been charged. Respondent fully participated and remained engaged in the proceeding, although the undersigned is not convinced that he appreciates the seriousness of these violations. Respondent contends that he has now retired from the practice of land surveying.

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 land surveying. ALA CODE § 34-11-1, et seq. (1975 as amended); ALA. ADMIN. CODE r. 330-X-I-.01, et seq. (2016).

2. As shown above, on the basis of the evidence of record and the testimony presented, including Respondent's admissions, the undersigned concludes that the above-described conduct constitutes violations of ALA. CODE § 34-11-16(a)1. and § 34-11-16(a)3. (1975 as amended). More particularly, Respondent's conduct as described hereinabove constitutes eight separate violations of ALA. CODE § 34-11-16(a)1. and two separate violations of ALA. CODE § 34-11-16(a)3. (1975 as amended). (BE #4).

3. Accordingly, it is hereby recommended that Respondent pay a fine in the amount of \$500.00 for each such violation, for a total of \$5,000.00, together with the cost to the Board of these proceedings, in accordance with ALA. CODE § 34-11-16(b) and (g) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2016), 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 Fact, Conclusions of Law, and Conclusion proposed by Administrative Law Judge Dana H. Billingsley. The Board finds the Respondent **GUILTY** of all allegations made against him, but modifies the proposed Recommendation, and **ORDERS** the following:

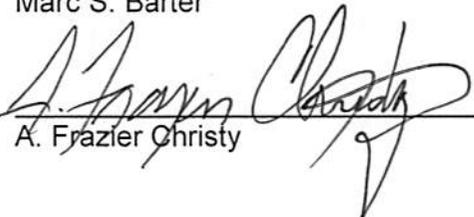
1. Respondent shall submit a check or money order to the Board made payable to the PE/PLS Fund in the amount of \$850 (eight hundred and fifty dollars) for the cost of the hearing within thirty (30) days of this Order.

ENTERED into on May 22, 2018.

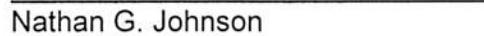

M. Elisabeth Hyde

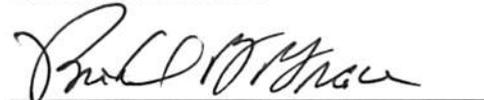

Randall D. Whorton


Marc S. Barter


A. Frazier Christy

RECUSED


Nathan G. Johnson


Richard G. Grace


M. Helen Adams-Morales