

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

IN RE THE MATTER OF:

THOMAS MCKAY BRITT

Case No. 2011-43-B

FINAL ORDER

On February 14, 2012 the Alabama Board of Licensure for Professional Engineers and Land Surveyors (hereinafter referred to as "Board") convened for an Administrative Hearing concerning the allegations filed against Thomas McKay Britt (hereinafter referred to as "Respondent"). The Board was represented by Mr. Benjamin Albritton, Board Counsel. Administrative Law Judge Dana A. Billingsley presided over the Hearing.

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.

FINDINGS OF FACT

1. Respondent Thomas McKay Britt is a licensed Professional Land Surveyor, license number 29397, and was so licensed at all times relevant to the matters stated herein. Respondent's license is currently in suspended status.
2. By Notice dated November 15, 2011, sent to Respondent's address of record at 4517 Kinvarra Circle, Mableton, Georgia 31026, via Certified and Regular Mail, Respondent was notified of a public hearing to be held on February 14, 2012, at 9:00 a.m. at the Board's office in

Montgomery, Alabama, 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. The Board's Charges were signed by the Executive Director on November 15, 2011, and contained a single charge of failure to maintain and provide to the Board required documentation verifying earned continuing competency credits.

3. The Board's Charges alleged that such acts constituted possible violations of ALA. CODE § 34-11-11 (a)(2) (1975 as amended), regarding gross negligence, incompetency, violation of the rules of professional conduct prescribed by the Board, or misconduct in the practice of land surveying; ALA. ADMIN. CODE r. 330-X-14-.06(a)1 (2010), violation of the rules of professional conduct or misconduct in the practice of engineering; and ALA. ADMIN. CODE r. 330-X-13-.02(12) (2010), governing the licensee's responsibility to maintain records that can be used to support claimed continuing competency credits. In particular, the Board's Charges alleged that Respondent was notified by e-mail on March 10, 2011, and by Certified and Regular Mail on May 4, 2011, that his 2011 professional land surveyor license renewal application had been selected at random for verification of earned continuing professional competency credits. The Board's May 4, 2011 correspondence requested Respondent to provide said documentation no later than June 4, 2011. The Board's Charges further stated that on August 3, 2011, Respondent was informed of a Board-initiated Complaint, alleging his failure to provide said documentation, to which he responded in an oral interview on August 31, 2011, and by telephone on September 7, 2011, that "he was unable to provide documentation which would verify the continuing professional competency credits earned by him."

4. 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 (2010) and sufficiently apprised Respondent of the nature of the charges against him. Service of the Notice and Board's Charges on Respondent to his address of record by Certified Mail was returned to the Board office on December 20, 2011, after three delivery attempts on November 18,

November 29 and December 3, 2011, marked as "Return to Sender; Unclaimed; Unable to Forward." However, Respondent had previously signed for receipt of Certified Mail at the same address as that provided for service of the Notice and the Board's Charges. The copy of the Notice and Board's Charges sent by Regular Mail to Respondent's address of record was not returned.

5. The undersigned conducted the hearing on the day set and at the time and place appointed; however, Respondent did not appear. In accordance with ALA. CODE § 41-22-12(d) (1975 as amended) of the Alabama Administrative Procedure Act, based on a determination that Respondent received proper notice of the scheduled hearing, the undersigned proceeded with the hearing in Respondent's absence.

6. The Board was represented by Assistant Attorney General Benjamin H Albritton. Appearing and testifying on behalf of the Board were Executive Director Regina Dinger; William R. Huett, Assistant Executive Director and Chief Investigator; and the Board's Legal Research Assistant, Joy Whatley.

7. On December 31, 2010, Respondent submitted an online renewal of his engineering Professional Land Surveyor's license for the calendar year 2011. As a condition of licensure, licensees are required to take annually fifteen hours of continuing competency credits or Professional Development Hours ("PDH"), which are to be reported on the renewal application form developed by the Board. ALA. ADMIN. CODE r. 330-X-13-.02(4)(a) (2010). Respondent's receipt for his online 2011 renewal shows that no PDHs were added, as a carryover of PDHs was used to meet the continuing competency requirement. Respondent reported the carryover credits used on his 2010 online renewal form, but actually earned the PDHs that were the subject of the Board's audit on December 30, 2009.

8. Ms. Dinger testified that, after completion of the renewal process, the Board randomly selects a percentage of its licensees to be audited in order to monitor their compliance with the continuing competency requirement. See ALA. ADMIN. CODE r. 330-X-13-.02(14) (2010). Ms.

Dinger stated that the responsibility for maintaining records which can be used to support the credits claimed is the responsibility of the licensee. Such records must be maintained for a period of four years and furnished to the Board on request. ALA. ADMIN. CODE r. 330-X-13-.02(12).

9. Ms. Whatley testified that she is the Board's designated contact for the submission of documentation relative to a PDH audit. On March 10, 2011, the Board notified Respondent by e-mail that he had been randomly selected for an audit based on his 2011 license renewal application and requested that he provide copies of the documents supporting the continuing competency credits he had earned by April 21, 2011. When she did not receive a response to that e-mail notification, Ms. Whatley stated that on May 4, 2011, she sent a follow-up letter to Respondent under Mr. Huett's signature via Regular and Certified Mail to his address of record at 4517 Kinvarra Circle in Mableton, Georgia. The letter requested that Respondent provide said documentation by June 4, 2011, and informed him that if the requested documentation was not provided before the Board's August 1-2, 2011 meeting, he could face a possible suspension of his license. A proof of delivery notice for the Certified Mail was generated by the U.S. Postal Service on May 6, 2011, together with a copy of the Certified Mail receipt signed by Respondent that same date.

10. Ms. Whatley testified that Respondent subsequently contacted the Board office, and she spoke to him on June 7, 2011. Pursuant to that conversation, she provided Respondent with copies of his 2010 and 2011 license renewal receipts by e-mail and requested copies of his supporting documentation for the reported PDHs. Having received no response, she again forwarded the same information to Respondent by e-mail on June 15 and 21, 2011. Respondent contacted her via e-mail on June 23 and 25, 2011, stating that he had been in the hospital from June 10 -22, 2011, and had not had time to look for the requested documentation.

11. Respondent failed to provide the requested documentation in response to the Board's inquiry. Ms. Whatley testified that on August 3, 2011, Ms. Dinger initiated a Complaint against

Respondent at the Board's direction, concerning his failure to provide the requested documentation in support of the continuing professional competency credits he obtained in order to renew his license, in violation of ALA. CODE § 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14(a)(1) and (15) and 330-X-13-.02(14)(b) (2010). Respondent was notified of the Complaint and the suspension of his license in correspondence from Mr. Huett dated August 4, 2011, sent via Regular and Certified Mail to Respondent's address of record, which requested that Respondent provide the supporting documentation by August 18, 2011. Respondent's receipt of said letter was evidenced by a Certified Mail delivery receipt bearing the signature of Thomas Britt, dated August 8, 2011.

12. Mr. Huett stated that he had been contacted by Respondent via e-mail on May 12, 2011, requesting that his license be placed on inactive status, but did not realize at that time that Respondent was the subject of an audit inquiry by the Board. Mr. Huett testified that he changed Respondent's license status in the Board's database to inactive and notified him of same by e-mail on May 12, 2011. On August 19, 2011, Mr. Huett again attempted to contact Respondent by e-mail and advised him that his failure to provide a response to the allegations in the Board's Complaint could cause the matter to be presented at a formal hearing.

CONCLUSIONS OF LAW

1. The Alabama Legislature created the State of 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 engineering and land surveying within the state. ALA. CODE §§ 34-11-1 (b) and (c) (1975 as amended). To ensure these mandates are met, the Board requires licensees to demonstrate continuing professional competency to maintain, improve or expand their skills and knowledge of the practice of professional land surveying as a condition for license renewal. ALA. ADMIN. CODE r. 330-X-13-.02(1), (2) (2010).

2. ALA. ADMIN. CODE r. 330-X-13-.02(12) (2010) requires a licensee to maintain records supporting the continuing competency credits claimed. Records required include, but are not limited to, information detailing the type of activity claimed, sponsoring organization, location, duration, speaker or instructor, credits earned and evidence of attendance. The rule provides that these records must be maintained for a period of four years and must be furnished by the licensee upon the Board's request for audit verification purposes.

3. The Board is empowered to reprimand, censure, fine or place on probation any licensed land surveyor or to suspend, refuse to renew or revoke the certificate of any licensee for violation of any provision of Alabama law regulating the practice of land surveying or for any violation of the administrative rules prescribed by the Board. ALA. CODE § 34-11-11(a)(2) (1975 as amended). See also ALA. ADMIN. CODE r. 330-X-14-.06(a)1. (2010).

4. Respondent was notified by the Board no less than ten times, by telephone, e-mail, Regular and Certified Mail, since March 10, 2011, of the requirement that he provide documentation supporting the continuing competency credits claimed in support of his 2011 Alabama Professional Land Surveyor license renewal application, pursuant to a random audit of the Board. During that period, the Board extended the deadlines for Respondent's compliance with its audit request no fewer than four times. The Board's Charges reflect that Respondent stated in an oral interview on August 31, 2011, and by telephone on September 7, 2011, that "he was unable to provide documentation which would verify the continuing professional competency credits earned by him," and the testimony and documentary evidence provided at the hearing substantiate Respondent's failure to provide any such documentation to the Board.

5. The evidence of record thus supports a finding that Respondent has "failed to maintain and provide to the Board required documentation verifying earned continuing competency credits," as specified in the Board's Charges of November 15, 2011.

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, including the licensee's responsibility to maintain records that can be used to support claimed Professional Development Hours. See ALA. ADMIN. CODE r. 330-X-14-.06(a)1, and 330-X-13-.02(12) (2010).

2. As shown above, on the basis of the evidence of record and the testimony presented, it is hereby concluded that Respondent's failure to maintain and produce records in support of the Professional Development Hours for which he certified compliance with the Board's continuing competency requirements on his 2011 professional land surveyor license renewal constitute violations of ALA. CODE § 34-11-11 (a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)1. (2010) (violation of the laws and rules and regulations of the Board) and 330-X-13-.02(12) (2010) (failure to maintain records that can be used to support claimed continuing competency credits).

3. Accordingly, it is hereby recommended that Respondent's Alabama Professional Land Surveyor license be lifted from suspended status and placed on probation for a period of two years, to be audited twice in the next seven years, and that Respondent pay a fine in the amount of \$750.00 for said violations, together with the cost to the Board for these proceedings, in accordance with ALA. CODE § 34-11-16(g) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2010), within thirty days of the date of a Final Order issued by the Board.

CONCLUSION

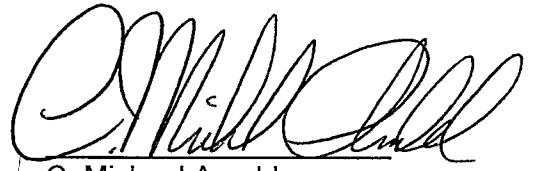
THE BOARD, after deliberation and review, agrees with and adopts as final these Findings of Facts, Conclusions of Law proposed by Administrative Law Judge, Dana H. Billingsley and hereby finds Respondent **GUILTY** of the allegations made against him.

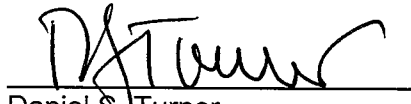
The Board respectfully modifies the Administrative Law Judge Billingsley's Conclusions and Recommendations and hereby **ORDERS** as follows:

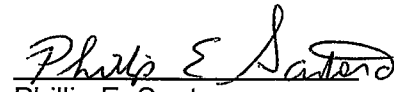
1. Respondent's professional land surveyor license be removed from suspended status and be placed in ***lapsed*** status.
2. Respondent shall pay to the Board a fine of \$750.00 within thirty (30) days of Final Order.
3. Respondent shall pay to the Board \$828.75 for cost of the hearing within thirty (30) days of Final Order.
4. Respondent's professional land surveyor license shall remain in ***lapsed*** status until he has complied with the Final Order. Respondent must then submit to the Board a request for reinstatement of his professional land surveyor license and comply with all requirements of reinstatement
5. Upon reinstatement Respondent's professional land surveyor license renewal shall be subject to continuing professional competency audit twice in the next seven (7) years.

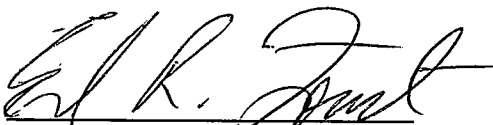
Done this the 16th day of March, 2012


W. Gerald Wilbanks

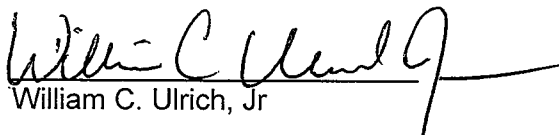

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