

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

IN THE MATTER OF:

Roddy Fitzgerald
Commodore Steel Buildings

Respondent



Case No. 2013-39-C

HEARING ORDER

On January 15, 2015 a hearing was convened concerning the allegations filed against Respondent, Roddy Fitzgerald. The Board was represented by Mr. Benjamin Albritton, Board Counsel. Administrative Law Judge Dana A. Billingsley presided over the Hearing. Mr. Fitzgerald 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 Commodore Steel, Inc. ("Commodore") is a corporation located at 3252 Cottage Hill Road in Mobile, Alabama. Commodore is a non-licensee and has at no time been issued a valid Certificate of Authorization from the Board to practice or offer to practice engineering in the State of Alabama. (Tr. at 11-12); (BE #1).

2. Respondent Roddy L. Fitzgerald is the owner of Commodore and is also a non-licensee, having at no time been issued a license from the Board to practice or offer to practice engineering in the State of Alabama. (Tr. at 11); (BE #1).

3. On August 22, 2013, the Board received a Complaint against Respondents from Mr. William Brian Puckett, which alleged that he had purchased a pre-engineered building from Commodore that did not meet the requirements of his contract or the plans provided by Commodore's engineer. (BE #2). In particular, the Complaint alleged that Commodore contracted to provide a pre-engineered steel building that would meet the 2009 International Building Code ("IBC") and a 140 mph wind speed; however, a review conducted by an Alabama licensed professional engineer indicated that "the building provided does not meet the original design nor does the building provided comply with the current building code." (BE #11). The Complaint was assigned Case No. 2013-39-C by the Board. (BE #2).

4. On August 26, 2013, the Board's Assistant Executive Director, William R. Huett, notified Mr. Puckett that an investigation had been opened on his Complaint (BE #7) and notified Respondent of the Complaint, requesting that he provide copies of any documents related to the building project, including, but not limited to, design drawings, plans, invoices, and correspondence, before September 10, 2013 (BE #11). (Tr. at 43, 80-81). Respondents provided a response on September 30, 2013. (Tr. at 82); (BE #12).

5. By Notice dated July 8, 2014, Respondents were notified via Certified and First Class Mail of the place, date and time of a public hearing to be held concerning their alleged violations of the Board's statutes governing the practice of engineering. On September 17, 2014, Respondents requested a continuance of the hearing, which was unopposed by the Board and granted by order issued that same date.

6. By Notice dated September 24, 2014, Respondents were notified of the rescheduled public hearing to be held on January 15, 2015, concerning their alleged violations of ALA. CODE § 34-11-15(a) (1975 as amended), practicing, offering to practice or holding oneself out as qualified to practice engineering in the State of Alabama without being licensed or

exempted from licensure in accordance with state law; ALA. CODE § 34-11-15(b), violation by any corporation, partnership or firm of any provision of the Alabama Code governing the practice of engineering; and ALA. CODE § 34-11-16(a)(1), permitting the assessment of a civil penalty against any non-licensed person, corporation or other entity found guilty by the Board of engaging in the practice of, or offer to practice, engineering in this state without first obtaining a license from the Board, which were specified in detail in the Board's Charges accompanying the Notice. (Tr. at 14-15); (BE #1). The Board's Charges stated further:

The Board alleges Respondent provided metal building design drawings dated 4/13/13 that bear the name "Commodore Steel Buildings" and the Owner name "Brian-Puckett", that were to be used to erect a metal building in Silverhill, Alabama for William Brian Puckett.

The Board alleges Respondent's firm provided metal building design drawings dated 4/29/13 that bear the name "Commodore Steel Buildings" and the Job ID Brian-Puckett, that were to be used to erect a metal building in Silverhill, Alabama for William Brian Puckett.

The Board alleges Respondent's firm provided metal building design drawings dated 8/01/13 that bear the name "Commodore Steel Buildings" and the Owner name "Brian-Puckett", that were to be used to erect a metal building in Silverhill, Alabama for William Brian Puckett. The Board alleges the design drawings prepared by Respondent for William Brian Puckett are the practice of engineering, and the structure shown and indicated on the documents does not meet the 2009 IBC ASCE 705 wind loading or the 2012 IBC ASCE 7-10 wind loading.

(BE#1).

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. 330-X-16-.03 (2013) and sufficiently apprised Respondents of the nature of the charges against them and of the date, time and place of the hearing. There were no objections to the form or substance of the Notice.

8. The undersigned conducted the hearing on the day set and at the time and place appointed. The Board was represented by Assistant Attorney General Benjamin H. Albritton. Appearing and testifying on behalf of the Board were Executive Director Regina A. Dinger;

Complainant William Brian Puckett; Assistant Executive Director and Chief Investigator William R. Huett; and Robert Herbert, Special Investigator with the Board. Respondent appeared *pro se* and testified on his own behalf. The Board introduced sixteen exhibits, which were admitted into the record; Respondents' objections to BE #3, 4 and 5 were noted for the record. Respondents did not offer any documentary evidence for the record.

9. Ms. Dinger testified regarding the Board's Charges and the September 24, 2014 Notice to Respondents informing them of the Charges and of the date, time and place for the hearing. (Tr. at 14); (BE #1). On cross-examination, Ms. Dinger stated that whether or not the design drawings for a project have been stamped or sealed by an engineer, the documents reflect that engineering has occurred, and they need to be sealed by a licensed professional engineer ("PE"). Shop drawings based on that design may be done by general contractors or other persons engaged in the construction industry, but they should all refer back to signed and sealed design drawings. (Tr. at 16-17).

10. Mr. Puckett testified that he sought to have a steel building erected on his property and was referred to Respondents by a structural engineer. He stated that he is not an engineer and has never represented to anyone that he is one, including Respondent. Mr. Puckett stated that he works as a project coordinator for an architectural firm in Fairhope and met Respondent at his office there. (Tr. at 26-28). He said that he asked for a building that would withstand the wind speeds in Fairhope, Alabama, and received drawings stating that the building was constructed for 140 mph per the 2009 IBC. (Tr. at 27-28). He understood that the building would be engineered to meet those wind speeds and Commodore would provide him with a product that met those specifications; however, while the building was being constructed, Mr. Puckett said he became concerned that the building would not meet his specifications. He said he

met Respondent onsite during construction of the project to address those concerns, and Respondent said "he would have his engineer take care of it" and would "provide [him] with a revised set of engineered drawings." (Tr. at 29-30, 32); (BE #3).

11. Mr. Puckett stated that he asked Mr. Jeffrey McCarthy, an Alabama licensed PE, to review the building and provide him with an opinion regarding its structural integrity. The stamped and sealed report, issued July 30, 2013, stated that the building as constructed did not comply with the design drawings dated May 6, 2013, and wind loads were provided based on the 2009 IBC, instead of the 2012 IBC, resulting in many of the members being "grossly under designed" and in noncompliance with both the 2009 and 2012 building codes. (Tr. at 32-38); (BE #4). On August 1, 2013, Mr. Puckett sent a letter to Respondents regarding Mr. McCarthy's findings and requested that Respondent "have your engineer, registered in the state of Al, visit the building, inspect what you provided and generate a revised set of drawings specifying what needs to be added and or modified to bring the building up to the building code requirements within 5 business days from the date of this letter." (Tr. 39-40); (BE #5).

12. The plans for permit or construction provided by Respondents dated April 29, 2013, reflect a wind speed of 140 mph and the 2009 IBC. (BE #6). The initials "JK" appear in the engineer block on the plans. *Id.* Respondent stated that the initials belong to John Katobi. (Tr. at 42). The contract between the parties also specifies a 140 mph wind speed and the 2009 IBC. (BE #8). Mr. Puckett stated that he was never provided with any stamped, engineered drawings for his project, and he was unable to determine the identity of the project engineer. (Tr. at 48).

13. Mr. Puckett stated that Respondent informed him he never paid for stamped drawings, but they could be provided at an additional cost. (BE #9). The final "corrected drawings...to code for Silverhill, Alabama," were provided on August 1, 2013, referencing IBC 2009 and a 140 mph wind speed. (BE #10). Mr. Puckett stated that he understood the structural

design for his building had been done by Commodore. (Tr. at 61). He stated that he never received an "engineered letter" from Respondents. (Tr. at 62).

14. On cross-examination, Mr. Puckett stated that the building as constructed does not meet the specifications on BE #10. (Tr. at 66-69, 73). On re-direct, Mr. Puckett clarified that Respondents erected the building at no cost to Mr. Puckett. (Tr. at 72-73). He stated further that he wanted plans that reflected that the building had been constructed to code, meet a 140 mph wind speed and were engineered by an engineer. (Tr. at 75-76).

15. Mr. Huett testified that once a Complaint comes in to the Board, the complainant and respondent are both notified that the Complaint has been received, and the respondent is asked to respond to the Complaint. The case is assigned to one of the Board's Investigators. If the matter requires a technical review, it is assigned to a volunteer expert, who takes the documents in a sanitized version - without any identifying information as to who created them - and reviews them to see if they evidence the practice of engineering. (Tr. at 79-85). Once the investigation is completed, it is referred to the Board's Investigative Committee to determine whether there is probable cause that a violation of the Board's law or rules occurred. If so, the matter will be set for hearing. The Investigative Committee is comprised of Ms. Dinger, Mr. Huett, Mr. Albritton, and a rotating Board member - in this case, Mr. Charles P. Willis. (BE #11); (Tr. at 86-88).

16. On cross-examination, Mr. Huett confirmed that on September 30, 2013, Respondent provided a response to the Board, stating, "After being told that the requested building requirements per Mr. Puckett exceeded that of the Baldwin County Building Department building codes, the building was designed to meet those requirements." (BE #12); (Tr. at 91). Mr. Huett clarified that he never asked Respondent who designed the building and stated that the Board's technical advisor "determined that the drawings were the practice of

engineering." (Tr. at 89-91). He stated further that while it is perfectly legal for a company to subcontract with a licensed engineering firm to do design work, there must be a "clarification document" of some kind showing that the engineering work is being provided by a licensed engineer. Generally speaking, that evidence appears on the document itself, as in an engineer's stamp. (Tr. at 92-94).

17. Even with a manufactured building, Mr. Huett stated that there has to be a design document that has been stamped and sealed by an engineer, which is then used to manufacture the building. If the design document is altered or modified, that modification or alteration should be stamped and sealed by the engineer performing the modification. (Tr. at 95). Any engineering document in Alabama is required to be stamped and sealed by the engineer who designed or modified the original project. (Tr. at 97). If a company subcontracts out its engineering services, it must clearly state or disclose that the services are subcontracted and may not represent that it provides the services itself. (Tr. at 98-99, 109-11). Mr. Huett confirmed that Mr. Katobi is an Alabama licensed PE. (Tr. at 101).

18. Mr. Huett testified that Respondent's website states, "We offer custom steel building designs for your special requirements whether it is a unique application for our standard metal buildings or a design that requires additional support from an architect or engineer." On the commercial buildings section of its website, Respondent states, "Our engineers can design a building of any size suitable for any needs imaginable." (BE #13); (Tr. at 102-04).

19. Mr. Herbert testified that Respondent's documents were provided to Mr. Marvin Pitts, serving as the Board's Technical Advisor, in a sanitized form for review to determine if they constitute the practice of engineering. (BE #6, 10, 14); (Tr. 116-17). Mr. Pitts' stamped and sealed response letter, dated February 11, 2014, stated that the documents are "examples of the practice of engineering, because the adequate performance of the structure requires engineering

education, training and experience. Further documents J-06-001, B-06A-OI6 and B08A-001 reference that an 'Engineered letter to be issued at completion'. The drawing status block found on document J-06-001 does list the initials of an Engineer 'JK'." (BE #16). Mr. Pitts concluded further that "The structure shown and indicated on the documents listed above does not meet the 2009 IBC ASCE 705 wind loading or the 2012 IBC ASCE 7-10 wind loading" and explained that the building appeared to have been designed using Metal Building Software [MBS], which does a complete design, detailing, costing and drafting of steel framed metal buildings." (Tr. at 123-26); (BE #16).

20. On cross-examination, Mr. Herbert clarified that he did not know the exact location for the building given to Mr. Pitts, from which he could ascertain the applicable building code. (Tr. at 127-29). However, the wind speeds stated on the documents provided to Mr. Pitts for review and on the contract were 140 mph; the code listed was IBC 2009. (Tr. at 129-31, 133-34). Mr. Herbert stated that Respondent told him in a telephone interview on February 18, 2014, that the building was designed by him using engineering software and no engineer was involved in the design of the project. (Tr. at 136-42).

21. The tape recording of the February 18, 2014 interview was played in its entirety and transcribed for the record. In it, Respondent stated that the engineering deposit indicated on the contract was required to begin manufacturing the building, as there was no engineering involved and Mr. Puckett did not want stamped drawings. (Tr. at 144-45). Respondent stated that the design drawings are "printed out from our MBS software that we pay for which is a metal building engineering software, design software that I pay over \$2,000 a month for. ...It is designed to build buildings to a certain degree without an engineering stamp, but it is - it is designed by engineers." (Tr. at 163-64). Respondent said that up until August or September of 2014, he had an engineer in Texas who had MBS on his computer, and he would send the

customer specifications to the engineer, who would make the modifications and stamp the drawings. He said the design drawings have not been done in house since then, and the foundations are done by local engineers. (Tr. at 168-70). No design drawings were provided in this case because Mr. Puckett didn't want to pay for them. (Tr. at 171).

22. Respondent testified that there was not a stamp on the drawings for Mr. Puckett's project because the engineer, Mr. Katobi, was paid a lesser amount by Respondent per project when his stamp was not required. Mr. Puckett did not wish to pay the difference required to obtain stamped drawings. (Tr. at 182-83). Respondent clarified that he had the MBS software on one of his computers at the company, and his employee worked remotely with Mr. Katobi in utilizing the software. Mr. Katobi stamped "99%" of the drawings, but did not stamp the drawings in this instance. (Tr. at 184-85). Respondent stated that he understood Mr. Puckett would be the "engineer of record" on the project. (Tr. at 185). Respondent said he never intended to break the law or do anything wrong.

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 in this state. ALA. CODE § 34-11-2(c) (1975 as amended). It is unlawful for any person to practice or offer to practice engineering in this state unless he has first been duly licensed by this Board or is specifically exempted from licensure under Alabama law. ALA. CODE §§ 34-11-2(a) and (c) (1975 as amended).

2. The "practice of engineering" is defined under ALA. CODE § 34-11-1(7) (1975 as amended), as:

Any professional service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of

special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, design and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, and the review of construction or other design products for the purpose of monitoring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products; equipment of a control, communications, computer, mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and including other professional services necessary to the planning, progress, and completion of any engineering services.

"Design coordination includes the review and coordination of those technical submissions prepared by others, including...consulting engineers..." ALA. CODE § 34-11-1(7)a. (1975 as amended).

3. ALA. CODE § 34-11 -1 (6) (1975 as amended) provides:

Any person shall be construed to practice or offer to practice engineering ..., within the meaning and intent of this chapter, ... who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer ... or who represents himself or herself as able to perform or who does perform any engineering ... service or work or any other service designated by the practitioner which is recognized as engineering

4. As evidence of licensure, each professional engineer obtains a seal from the Board bearing the licensee's name, licensure number and the words, "licensed professional engineer," to be used to certify engineering drawings, plans, specifications, plats and reports issued by the licensee or qualified persons under the licensee's direction and control. ALA. CODE § 34-11-7(c) (1975 as amended).

5. A Certificate of Authorization is issued to a corporation, partnership or firm practicing or offering to practice engineering through an individual licensed engineer who is a full-time employee of the corporation, partnership or firm. ALA. CODE § 34-11-9(a)(1) (1975 as amended).

6. In addition to any other provisions of law, the Board is empowered to enter an order assessing a civil penalty against any non-licensed person for engaging in the practice or offer to practice engineering in Alabama without having first obtained a license from the Board.

ALA. CODE § 34-11-16(a)(1) (1975 as amended).

7. It is undisputed that Respondent advertised to commercial clients via its website that "Our engineers can design a building of any size suitable for any needs imaginable" and it offers custom designed steel buildings "that require additional support from an architect or engineer." (BE #13). While Respondent permissibly subcontracted its engineering services to Mr. John Katobi, an Alabama licensed professional engineer, it failed to clearly state or disclose that the services are subcontracted, representing that it provides the services itself, without having first obtained a Certificate of Authorization from the Board. Accordingly, the undersigned finds that these actions were in violation of ALA. CODE §§ 34-11-15(b) and 34-11-16(a)(1) (1975 as amended).

8. The Board's Technical Advisor also determined that the metal building design drawings provided to Mr. Puckett, dated April 29, 2013 (BE #6) and August 1, 2013 (BE #10), constituted "examples of the practice of engineering, because the adequate performance of the structure requires engineering education, training and experience" (BE #16), to which an engineer's stamp and seal should have been affixed.

The undersigned agrees that Respondents issued these drawings without having obtained a Certificate of Authorization therefor, in violation of ALA. CODE §§ 34-11-15(b) and 34-11-16(a)(1) (1975 as amended).

CONCLUSION AND RECOMMENDATION

1. The responsibility for safeguarding the life, health and property of the citizens of this state from the illegitimate practice of the profession of engineering has been delegated by the Alabama Legislature to the State Board of Licensure for Professional Engineers and Land Surveyors.

2. As shown above, on the basis of the evidence of record and the testimony presented, it is hereby concluded that Respondents' conduct constitutes violations of ALA. CODE §§ 34-11-15(b) and 34-11-16(a)(1) (1975 as amended).

3. Accordingly, it is hereby recommended that Respondents be ordered to cease and desist any and all acts constituting the practice of or offer to practice engineering in the State of

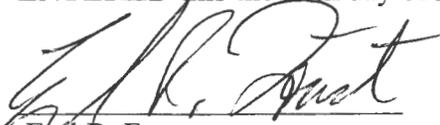
Alabama and that they be assessed a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), together with the cost to the Board for these proceedings, in accordance with ALA. CODE §§ 34-11-16(b) and (g) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2013).

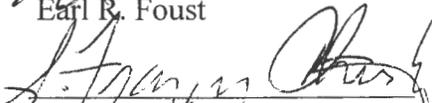
ORDER

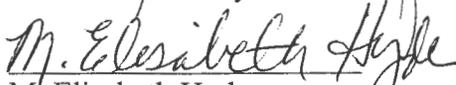
The **BOARD**, after deliberation and review, agrees with and adopts as final the Findings of Facts, Conclusion of Law and Conclusion and Recommendations proposed by Administrative Law Judge, Dana H. Billingsley. The Board further finds the Respondent **GUILTY** of the allegations made against him and **ORDERS** the following:

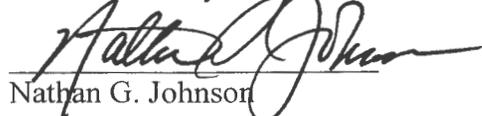
1. Respondent shall **CEASE and DESIST** all acts constituting the practice or the offer to practice of engineering in the State of Alabama.
2. Respondent shall pay a civil penalty to the Board via a check or money order made payable to the State of Alabama General Fund in the amount of \$2,500 (Two Thousand Five Hundred dollars) within thirty (30) days of the date of this Order.
3. Respondent shall submit a check or money order made payable to the PE LS Fund in the amount of \$1,925.55 (Nineteen hundred and Twenty five dollars and fifty-five cents) as payment for the cost of hearing within thirty (30) days of date of this Order.

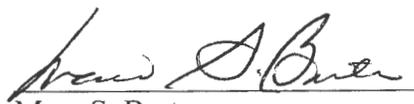
ENTERED this the 30th day of April, 2015


Earl R. Foust


A. Frazier Christy


M. Elisabeth Hyde


Nathan G. Johnson


Marc S. Barter

RECUSED
Charles P. Willis


Richard G. Grace