

from Mr. Frank A. Dagley, Professional Engineer ("PE"), Frank A. Dagley & Associates, Inc., which alleged that Respondents had produced metal building design drawings dated September 1, 2014, for Irvington Fellowship Bible Church in Irvington, Alabama, and metal building design drawings dated November 15, 2014, for Mt. Zion Baptist Church in Mobile, Alabama; the design drawings bear the PE seal and signature of Mr. Jalal Ketabi, License Number 23271, which were used without Mr. Ketabi's knowledge or permission. (BE #3). The Complaint was assigned Case No. 2015-19-C by the Board, and the allegations were included in Counts I and II of the Board's Charges against Respondents. (BE#2).

4. On February 23, 2015, the Board's Assistant Executive Director, William R. Huett, notified Mr. Dagley that an investigation had been opened on his Complaint; on February 24, 2015, Mr. Huett notified Respondents of the Complaint via First Class and Certified Mail, requesting that they provide a written response and copies of all documents related to the Mt. Zion building project, including, but not limited to, design plans, calculations, emails, proposals, invoices, contracts, etc., before March 13, 2015. (Tr. at 26); (BE #3, B-11, B-12). On March 19, 2015, Respondents were again notified of the Complaint via Fed Ex and were asked to provide a response by April 2, 2015. The Fed Ex package was delivered to Respondents on March 23, 2015. (Tr. at 28-29); (BE #3, B-21, B-23). Respondent Fitzgerald was also contacted via e-mail on March 16, 2015, by the Board's Special Investigator, Mr. Robert Herbert, and was asked to provide a response to the Complaint by March 30, 2015. (BE #11).

5. On May 27, 2015, the Board received a Complaint against Respondents from Mr. Michael R. Murphy, PE, Vulcan Steel Structures ("Vulcan"), alleging that Respondents revised metal building design drawings dated July 31, 2014, for the Alqmad Zhara project in Mobile, Alabama, to reflect a design wind speed of 140 mph Exposure B per the IBC 2009 Code; the revised designs bear the PE seal and signature which were used without Mr. Murphy's of Mr. Murphy, License Number 12164 knowledge or permission. (BE #4). The Complaint was assigned Case No. 2015-33-C, and the allegations were included in

Count VIII of the Board's Charges against Respondents. (BE #2).

6. On May 27, 2015, Mr. Huett notified Mr. Murphy that an investigation had been opened on his Complaint; on May 28, 2015, Mr. Huett notified Respondents of the Complaint via First Class and Certified Mail, requesting that they provide a written response and copies of all documents related to the Alqmad Zhara building project before June 15, 2015. (Tr. at 30-31); (BE #4, B-4, B-5). The Certified Mail was delivered to Respondents on June 1, 2015. (BE #4, B-6).

7. On May 27, 2015, the Board received a Complaint against Respondents from Mr. Eric Johansen, Kemko Inc., which raised the same allegations as those in Mr. Murphy's Complaint. (BE #5). The Complaint was assigned Case No. 2015-34-C, and the allegations were included in Count VIII of the Board's Charges against Respondents. (BE #2).

8. On May 29, 2015, Mr. Huett notified Mr. Johansen that an investigation had been opened on his Complaint; on May 28, 2015, Mr. Huett notified Respondents of the Complaint via First Class and Certified Mail, requesting that they provide a written response and copies of all documents related to the Alqmad Zhara building project before June 15, 2015. (BE #5, B-9, B-10). The Certified Mail was delivered to Respondents on June 1, 2015. (BE #5, B-11).

9. On June 16, 2015, the Board received a Complaint against Respondents from Mr. Wes Hardin, PE, Gulf States Manufacturers, which alleged that Respondents produced metal building design drawings dated February 5, 2015, for Mr. David Beard, bearing the PE seal and signature of Mr. Hardin, License Number 33780, which he had never seen and without his knowledge or permission. (BE #6). The Complaint was assigned Case No. 2015-38-C, and the allegations were included in Count IX of the Board's Charges against Respondents. (BE #2).

10. On June 18, 2015, Mr. Huett notified Mr. Hardin that an investigation had been opened on his Complaint and notified Respondents of the Complaint via First Class and Certified Mail, requesting that they provide a written response and copies of any design plans that they provided to clients that bear the signature and/or seal of Mr. Hardin before July 10, 2015. (BE #6, B-3, B-4). The Certified Mail was delivered to Respondents on June 30, 2015.

(BE #6, B-5).

11. On July 23, 2015, the Board received a Complaint against Respondents from Mr. Harold Wayne Gregory, PE, Kirby Building Systems, which alleged that Respondents produced metal building design drawings for Joe Costas, bearing the PE seal and signature of Mr. Gregory, License Number 26405, without Mr. Gregory's knowledge or permission. (BE #7). The Complaint was assigned Case No. 2015-44-C and the allegations were included in Count X of the Board's Charges against Respondents. (BE #2). Mr. Herbert notified Respondents by e-mail on September 2, 2015, that the complaint notification letter was returned to the Board. (BE #27).

12. On July 24, 2015, Mr. Huett notified Mr. Gregory that an investigation had been opened on his Complaint and notified Respondents of the Complaint via First Class and Certified Mail, requesting that they provide a written response and copies of any design plans they provided to clients that bear the signature and/or seal of Mr. Gregory before August 15, 2015. (BE #7, B-4, B-5).

13. Respondents provided a response to Mr. Murphy's Complaint via e-mail on June 22, 2015, denying any knowledge of changes made to the drawings by anyone other than Vulcan Steel, and stated that Mr. Chase Harrison handled that project. (BE #25). Respondent Fitzgerald provided a response to Mr. Dagley's and Mr. Hardin's Complaints to Mr. Herbert via e-mail on August 10, 2015, stating that he has never looked at any drawings or paid attention to the seal and could not locate any plans with Mr. Hardin's stamp on them except those submitted by Gulf States Manufacturing. (BE #24, 26).

14. By Notice dated February 2, 2016, 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 Ala. Code § 34-11-16(a)(1) (1975 as amended), 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; and Ala. Code § 34-11-16(a)(3) (1975 as amended),

presenting or attempting to use the certificate of licensure or the seal of another licensed engineer, which were specified in detail in the Board's Charges accompanying the Notice. (BE #2).

15. The Board's Charges state further in Counts III, IV, V and VI that Respondents produced metal building design drawings BP #105735 (Barin Field Youth Camp) and #104970 (Rusty Coker), Mobile, Alabama; drawings for 1505 Eunice Drive, Mobile County, Alabama; and drawings for 8811 McDonald Road, Irvington, Alabama, all bearing the signature and PE seal of Mr. Ketabi, without his knowledge or permission. (BE #2). In Count VII, the Board's Charges allege that Respondents produced an Anchor Bolt Plan for the Tri City Baptist Church in Millbrook, Alabama, without being licensed as a PE, which also includes revisions to columns and their locations that should have been signed and stamped by a licensed PE before being executed in the field. (BE #2).

16. 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 (2015) 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.

17. 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; Assistant Executive Director and Chief Investigator William R. Huett; Robert Herbert, Special Investigator with the Board; Complainant Frank Dagley; Complainant Mike Murphy; Complainant Wes Hardin; Complainant Harold Gregory; Mr. Gordon Davis; Mr. Chase Harrison; and the Board's Technical Advisor, Mr. Michael Amos. Respondent appeared pro se and testified on his own behalf. The Board introduced thirty-four (34) exhibits at the hearing, which were admitted into evidence. Respondents did not offer any documentary evidence for the record.

18. Ms. Dinger testified regarding the Board's Charges and the February 2, 2016 Notice to Respondents informing them of the Charges and of the date, time and place for the hearing. (Tr. at 17-18); (BE #2). Ms. Dinger stated further that Respondents were previously disciplined by this Board on April 30, 2015, for offering engineering services without first obtaining a PE license and a certificate of authorization from the Board. (BE #1). For these violations, Respondents were ordered to cease and desist all acts constituting the practice or the offer to practice engineering in the state and pay a civil penalty of \$2,500.00, plus the cost of the proceedings, in the amount of \$1,925.55, within thirty (30) days of the date of the Board's Hearing Order. Id. As of the date of this hearing, Respondents had not complied with the Hearing Order and had not made any payments to the Board. (Tr. At 15-16).

19. Mr. Dagley testified that he had worked for Respondents during the five (5) or six (6) years prior to 2014; when he discovered that the last two (2) projects with Respondents were fraudulently stamped, he ceased providing them engineering services. The designs provided by Respondents for the Mt. Zion and Irvington churches bore the name of Commodore Steel and were stamped with Mr. Ketabi's signature and PE seal. Mr. Dagley contacted Mr. Ketabi, who informed him that he had not done work for Respondents in two (2) or three (3) years because they failed to pay him and that he did not sign and produce the designs for these church projects; Mr. Dagley also contacted the City of Mobile Building Inspector and the churches, informing them that the designs were stamped without the PE's permission. (Tr. at 38-43); (BE #8, 9). Mr. Dagley opined that the submission of stamped and sealed designs without the engineer's knowledge or consent constitutes a serious violation of the Board's law and is a danger to the public. Officials managed to stop the Irvington project before construction began; however, the Mt. Zion Church was already erected and required a redesign/retrofit in order to meet the building code. (Tr. at 45, 47-48).

20. Mr. Murphy testified that he sealed a set of designs for Vulcan for the Alqmad Zhara project in Mobile with a 130 mph Exposure B wind load (BE #4, B-2) which were changed

without his knowledge to a 140 mph wind load per the IBC 2009 Code (BE #4, B-3); he did not know who made the changes. (Tr. at 56). The plans submitted to the City of Mobile on July 25, 2014, reflect the change in the wind load to 140 mph and IBC 2009 and bear Mr. Murphy's signature and seal (BE #4, B-3). Mr. Murphy stated that any change in the wind load should be approved by a PE – the building design would change as a result of the increased wind pressure, and an engineer would need to verify that the design was adequate for the 140 mph wind load. (Tr. at 58). He stated that he noticed the change in the font in the design load section of the building plans when he received a copy of them from the City of Mobile. (Tr. At 58-59); (BE #5, B-4, B-5, B-6). He opined that such a change without the approval of a PE constitutes a danger to the public. (Tr. at 60). On further questioning from the Board, Mr. Murphy agreed that metal buildings try to utilize steel in an efficient manner so the structural members are stressed within up to 5-10% of what the building code would allow, so the building as designed could not withstand the additional 15-16% stress from the change in the wind load from 130 to 140 mph without a further modification of the design. (Tr. at 60-62).

21. Mr. Hardin testified that he did not give Respondents permission to use his seal and signature on the plans submitted with his Complaint, bearing Commodore Steel's logo, and he did not know anything about the project. (Tr. at 67-68); (BE #6, B- 2). He knew that Respondents ordered some buildings from Gulf States Manufacturing and those plans would have included his seal and signature; his seal and signature were then likely cut and pasted onto the designs bearing Commodore Steel's name. Mr. Hardin opined that it was improper for Respondents to cut and paste his seal and signature onto their own designs, and such actions constitute a risk to the public safety. (Tr. at 68-69).

22. Mr. Gregory testified that Kirby Building Systems had done several projects with Respondents, providing sealed, approved drafts to them for review on or about April 17, 2014. (BE #7, B-2). Mr. Gregory testified that his seal, signature and the April 17, 2014 date appear to have been copied onto Respondents' metal building design drawings for Joe Costas without his

knowledge or permission (BE #7, B-3); he did not do any work for Respondents on this project. Mr. Gregory stated that he checked his personal log to ensure that he did not send out any plans after April 2014 to Respondents and could find nothing. He stated further that he does no engineering work outside of Kirby Building Systems, and Respondents' use of his seal and signature in this manner constitutes a danger to the public. (Tr. at 74-79).

23. Mr. Herbert testified that he interviewed Mr. Ketabi in March 2015, and confirmed that Mr. Ketabi did not design plans for the Irvington and Mt. Zion Church projects, he was not under contract to Respondents at that time and had not done any work for them for one (1) or two (2) years. (Tr. at 84-85). He did work previously with Computer Aided Design ("CAD") designer Jermaine Jenkins on a project for Respondents; Mr. Jenkins was hired by Respondents to provide CAD support to the PE and communicate with both the PE and Respondents on the design. Mr. Jenkins would forward those documents to Mr. Ketabi for his review and any needed changes, which would be incorporated by Mr. Jenkins into the final design and approved by Mr. Ketabi. Mr. Ketabi would then seal the documents and return them to Mr. Jenkins, who would forward them to Respondents. The last such project Mr. Ketabi completed for Respondents was dated August 14, 2013. (Tr. at 86-88); (BE #10).

24. During the course of his investigation, Mr. Herbert obtained copies of the following documents: Respondents' contract with Scott Contracting Company for the Mt. Zion Church (BE #12); Respondents' design for the Barin Field Youth Camp, as described in Count III of the Board's Charges, bearing Mr. Ketabi's seal and signature (BE #13); Respondents' design for Rusty Coker's project, as described in Count IV of the Board's Charges, bearing Mr. Ketabi's seal and signature (BE #14); the Building Permit issued to Respondents for David Beard's project, as described in Count IX of the Board's Charges (BE #15); Respondents' design for Joe Costas' project, 13043 Tanner Williams Road, as described in Count X of the Board's Charges, bearing Mr. Gregory's seal and signature (BE #16); and Respondents' design drawings for [REDACTED], as described in Count V of the

Board's Charges, bearing Mr. Ketabi's seal and signature (BE #17). Mr. Herbert confirmed with each of these PEs that they had no knowledge of these projects bearing their seal and signature, and the same were used without their permission. (Tr. 92-99); (BE #23; BE#16, B-42).

25. Mr. Michael E. Howell, Certified Building Official and Certified Floodplain Administrator for the Baldwin County Commission, provided Mr. Herbert with an Affidavit certifying that the Baldwin County Building Inspection Department issued building permits to Commodore Steel Buildings under its General Contractors License for the Barin Field Youth Camp, Rusty Coker project and David Beard project. (BE #18). An Affidavit from Mr. Peter Olivero lists the documents produced by the Mobile County Public Works Department in response to the Board's investigation of this matter. (Tr. at 99-100); (BE #19).

26. BE #20 includes architectural and engineering documents for the Tri City Baptist Church project in Millbrook Alabama, provided by Mr. Rusty Kitchens, Independent Baptist Builders, as referenced in Count VII of the Board's Charges. The Charges allege that Respondents provided engineering services without being duly licensed through modifications to the building that did not comport with the design plans and without a licensed engineer's approval. (BE #2). The General Contractor's Board also contacted Mr. Herbert with regard to this project and asked that he investigate some identified engineering issues with the building; Mr. Herbert took photographs of the building on July 14, 2015 (BE #21), and obtained copies of the church's contract with Respondents and the Anchor Bolt Pattern Sheet, depicting changes made onsite under Mr. Fitzgerald's signature on April 24, 2015 (BE #22). (Tr. at 101-05).

27. On May 20, 2015, Mr. Herbert said he spoke with Mr. Randall Scott, the owner of Scott Contracting Company and the general contractor for the Mt. Zion Church project. Mr. Scott confirmed that he was hired by Respondents in December 2014 to provide a 60 x 100 metal building and engineered design plans for the project. (Tr. at 112). Mr. Scott corresponded with Mr. Ketabi about the design. Once the steel was delivered onsite, Mr. Scott stated that the

construction did not appear to comport with the design, and he contacted Mr. Dagley, who was responsible for the foundation. They determined that the plans had been altered, including Mr. Ketabi's signature and seal without his permission, and the project would have to be retrofitted by another engineer. (Tr. at 113-14).

28. During a subsequent interview on June 4, 2015, Respondent Fitzgerald informed Mr. Herbert that Mr. Harrison was responsible for falsifying the documents. (Tr. at 114-15). Mr. Harrison told Mr. Herbert that he had done sales, purchasing and CAD design work during his employment with Respondents from 2008 to August 2014, when he left the company. Mr. Harrison stated that he did not know how Mr. Ketabi's seal was placed on the Mt. Zion project designs and advised that it was Respondent Fitzgerald's project. He said he had already left the company when the plans for the Irvington Church and the Alqmad Zhara project were completed with the PEs' seals, and he was not involved with those plans. (Tr. at 1 18-22).

29. Mr. Beard informed Mr. Herbert that he contracted with Respondents for the construction of a 40 x 80 building, including engineered designs; the contract's total cost of \$52,800.00 included engineering costs. Because the design plans included Mr. Hardin's stamp and seal, Mr. Herbert advised Mr. Beard to have his project reviewed by another PE. (Tr. at 124-26).

30. Mr. Herbert testified that Respondent Fitzgerald said Mr. Harrison was completely and solely responsible for the Irvington Church project; Mr. Harrison provided the CAD design and should have referred the design to a PE for his review and approval before providing it to the client. After he separated from the company in August 2014, Mr. Harrison continued to do CAD design work for Respondents on a contractual basis at a rate of \$400.00 per project. (Tr. at 127-28). Mr. Harrison did the design plans for the Mt. Zion Church (BE #3, B-6) before leaving the company, and he later provided designs for the Barin Field Youth Camp (BE #13, B-29), the Rusty Coker project (BE #14, B-31) and the David Beard project (B-33) for \$400.00 each. (Tr. at 129-30). Respondent Fitzgerald told Mr. Herbert that he did not know why

Mr. Harrison would have forged the engineering seals on any of the building plans, but admitted that he was ultimately responsible for these acts as the company's owner. (Tr. at 130-31, 144).

31. Mr. Herbert testified that on September 30, 2015, Mr. Zhara said he contracted with Respondents in July 2014 to construct a metal building and requested engineered plans; however, Mr. Murphy's designs included the IBC 2006 and a 130 mph wind load and were rejected by the City of Mobile. Mr. Zhara said he advised Respondents of the problem and was provided with a new set of plans a day or two later, bearing the IBC 2009 and the 140 mph wind load requirements. Mr. Zhara then contacted Mr. Johansen at Kemko, Inc., regarding the building's encroachment onto an ALDOT easement; when he reviewed the plans, Mr. Johansen did not believe the building as erected matched the plans, and he contacted Mr. Murphy. (Tr. at 132-36).

32. On cross examination, Mr. Herbert clarified his understanding that Respondent Fitzgerald lacked the training and experience to utilize the company's CAD design software. (Tr. at 139).

33. Mr. Gordon Davis, PE, testified that Respondents called him in July 2015 to review reported problems with the Tri City Church project; in particular, he found that Respondents had increased one (1) of the bays by five (5) feet, made other minor modifications to the dimensions, and added a canopy to the front of building that was not included on the design drawings. Respondents were hired as the project's general contractor. (Tr. at 147-48); (BE #28, 29). Mr. Davis opined that such changes constituted the practice of engineering.

34. On cross examination, Mr. Davis stated that the design drawings provided by Gulf States and the other building manufacturer showed a collateral load of three (3) pounds per square foot, which was less than his calculation of six (6) pounds per square foot. The building as designed was 70 x 100, with wings measuring 25 x 80 (BE #20); modifications to the base basing were made by Respondents while erecting the building, without Gulf States' knowledge. Mr. Davis stated that he remained on the project to completion at the request of the church, but

he terminated his relationship with Respondents. He stated that if Respondents erected the canopy without design drawings and determined the member sizes to install, they were practicing engineering without a license. He did not know if any determination had ever been made to accommodate the additional loads that were not covered in the design of the building. (Tr. at 151-59).

35. Mr. Harrison testified that he concluded his contractual work for Respondents in or about November 2015; he was previously employed as their sales representative and provided building designs. Mr. Harrison would fill in the fields for building size and location in the computer software and forward the generated report to Mr. Ketabi for his review. Once the plans were stamped by the PE, he or Respondent Fitzgerald would submit them to the municipality for permitting. (Tr. at 163-65). He stated that when he left the company, he utilized other design drawings that he imported into AutoCAD to make changes to design plans, for subsequent review by a PE; however, he submitted the design plans for the Mt. Zion Church to Respondent Fitzgerald, not to Mr. Ketabi. Those designs included Mr. Ketabi's seal and signature because the seal and signature were part of the imported and exported data utilized from some of Mr. Ketabi's old projects. He assumed that the designs were re-reviewed by Mr. Ketabi, but he never told Respondent Fitzgerald they needed further review. He handled the Irvington Church project design similarly. (Tr. at 164-69).

36. Mr. Harrison stated that he kept the old projects as a record because he had been informed by a building inspector that if a building did not change at all, that same building could essentially be rebuilt for another client; however, he did not utilize old designs while he was still at the company because he would have been able to utilize the actual building program design. (Tr. at 169). He assumed that Respondent Fitzgerald knew, or should have known, that the projects he designed for Respondents on a contractual basis required a PE's further review. (Tr. at 172-73).

37. Mr. Harrison testified that Respondents' standard procedure was to meet with a

customer, agree on a design and price, sign a contract, and submit the design to a manufacturer, who would deliver the building onsite; Respondents would then construct the building or hire a third party to do so. Alternatively, Respondents would design the project in house utilizing Metal Building Software ("MBS") and send it to a PE to review and seal the design before erection. A complete file of the job produced by the MBS, including the design, calculations, loads, etc., would be sent to the PE for review, as well as any architect's drawings. (Tr. at 173-76). He stated that Commodore Steel is a private label company that represented itself to consumers as the complete fabricator, which would include engineering designs under its services umbrella; however, the company never directly employed an engineer. (Tr. at 176-77).

38. On further questioning, Mr. Harrison clarified to the Board that the entirety of a pdf design drawing was imported into AutoCAD, including the PE's signature and seal on that design. AutoCAD then converted the entire .pdf file into an AutoCAD file. Mr. Harrison never received any formal training in engineering or CAD design – a representative from MBS trained him to utilize their software. Mr. Harrison stated that he could use AutoCAD to manipulate the title block on old design projects to remove the designer's logo and add the Commodore logo, but he did not alter or remove the PE seal or signature that was also imported from the .pdf. (Tr. at 180-86). He advised further that when the license to use the MBS expired in 2013, one (1) year prior to leaving the company, he decided to copy design projects. Although Respondent Fitzgerald knew that Mr. Harrison had limited access to information to create the design drawings after he left the company and was also aware that the MBS had expired, the two men never discussed how Mr. Harrison was creating the designs. They also never discussed the Board's 2015 Hearing Order. (Tr. at 189-90).

39. Mr. Amos testified that he is a structural engineer for Chemours, formerly a DuPont company, and works on a part-time basis for the Mobile DuPont plant and Cain & Associates, also located in Mobile, Alabama. In March 2015, Mr. Herbert asked him to review the Mt. Zion and Irvington projects, which were provided to him in a sanitized form, to determine

if they constitute the practice of engineering or contain violations of the acceptable practice of engineering, (BE #30, 31). His initial report, dated March 31, 2015, described incomplete title blocks on both drawings; he saw no steel sizes on the drawings, which precluded him from doing an analysis; the standard sheet does not match the size of the building that was purchased and built; some of the plans have snow loads not required for Mobile/Baldwin County; the foundation drawings do not match the column designations on the floor plan; and the column designations on the roof framing plan on B-06-006 do not match the anchor bolt plan shown on that plan. (BE #32). It did not appear to him that a competent PE had reviewed these plans. (Tr. at 200-02). He opined that the use of Mr. Ketabi's seal and signature on these plans without his permission constitutes a violation of Alabama's engineering laws. (Tr. at 202).

40. The review was expanded on July 24, 2015, to include the remaining projects in the Complaint. (BE #33). Mr. Amos issued his report on August 31, 2015 concluding that the following projects had significant problems, did not meet the acceptable standards of practice for engineering, did not appear to have been reviewed by a competent engineer, violated Alabama law by using the seal and signature of a licensed PE without his knowledge or permission, and constitute a danger to the public safety and welfare: the Irvington Church project, the Barin Field Youth Camp, Rusty Coker's project, David Beard's project, Joe Costas' project, and the Eunice Drive project. (Tr. at 204-08); (BE #33). The churches, in particular, have a higher exposure category and stricter load requirements. (Tr. at 207).

41. Mr. Amos stated that he also received drawings for the Tri City Church project – on review, he determined that the steel and foundation drawings did not match, there was no canopy structure on the plans, and it appeared that elements had been moved on the plans, which required the services of a licensed PE. (BE #34). Mr. Amos opined that the described actions constitute the unlicensed practice of engineering. (Tr. at 209-10).

42. On cross examination, Mr. Amos confirmed that whoever is in charge of a project

needs to obtain approval from a PE for that project design or any modifications thereof. At no point in the process of constructing a building may any party determine to violate the law governing the construction of that project for fear of not being paid. (Tr. at 213).

43. Mr. Ketabi testified that he has done some design work for Respondents, but completed his last project for them on August 14, 2013. (BE #10, B-14). He stated that he always dates his projects and uses a different color ink for his signature than that on his seal. (Tr. at 220-21, 229). Mr. Ketabi verified that the seals and signatures on BE #3, B-5 and B-6; BE #13, B-29; BE #14, B-31; and BE #17, B-47, are not his, and he did not give his permission to use his seal and signature on these plans. (Tr. at 221-23); (BE #23, B-105). He stated that he has not worked with Respondents in several years because they did not pay him, and he realized that they are not getting their drawings reviewed, as required. (Tr. at 226). Such actions constitute a threat to the public safety. (Tr. at 228).

44. Respondent Fitzgerald testified that he has not paid the administrative fine assessed under the Board's April 2015 Hearing Order due to financial problems. His General Contractor's license was not renewed timely, and he incurred additional expense to correct the problems with the Mt. Zion Church. He admitted that he never attempted to contact the Board to work out a payment plan for his fine.

45. Respondent Fitzgerald stated that he has been in the metal building business since 1993; he learned the business through his employment with Olympia Building Systems, in Pittsburgh, Pennsylvania. He stated that he assumed certain things were being done correctly in Commodore's office while he was supervising projects in the field. Commodore Steel purchases metal buildings from different manufacturers and erects them for their customers. He stated that he never intended to circumvent the production of safe, engineer-approved metal buildings produced by companies such as Kirby and Gulf States, who have engineers on staff; he said he had no knowledge of Mr. Harrison's actions and never questioned the PE stamp on the drawings Mr. Harrison produced. With the exception of Mr. Ketabi, he said he never even knew the names of the engineers on those drawings until the Board took action against him, and he

did not check the company's records to know whether an engineer was being paid to review its plans or if the software license was still valid. He never thought about it. (Tr. at 234-46).

46. Respondent Fitzgerald said he was responsible for Commodore Steel's sales and overseeing the crews erecting his buildings. He employed a secretary and Mr. Harrison in the office to manage thirty (30) projects a year, but was rarely in the office himself. He did not purchase the MBS until he hired Mr. Harrison. Presently Commodore Steel can still buy and sell buildings, but it must contract with another company to function as the general contractor to erect those buildings. He is currently overseeing projects and selling buildings for Max Hall Construction, which functions as the general contractor for those projects. He admitted that as the company's owner, he was responsible to oversee Commodore Steel and all aspects of its business. Respondent stated that if his General Contractor's license is renewed, he will purchase buildings directly from the manufacturers; eventually, he hopes to get out of the sales business completely and simply erect other people's buildings. (Tr. at 247-53).

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(b) (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 (b) (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.

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 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 an employee, agent, officer or partner 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, corporation or other entity found guilty of 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). Non-licensees may also be assessed a civil penalty if found guilty of presenting or attempting to use the certificate of licensure or the seal of another licensed engineer. Ala. Code § 34-11-16(a) (3) (1975 as amended).

7. There was overwhelming evidence presented at the hearing that Respondents presented the seal and signature of licensed PEs Mr. John Ketabi, Mr. Wes Hardin, Mr. Michael Murphy and Mr. Harold Wayne Gregory on building design drawings issued by Respondents, without the PEs' knowledge or permission, to their customers and/or to the applicable municipal or county permitting authorities for the Irvington Fellowship Bible Church projects designed for Mt. Zion Baptist Church Alqmad Zhara, David Beard, Joe Costas, Barin Field Youth Camp, Rusty Coker and 1 [REDACTED]. Such actions constitute clear violations of Ala. Code § 34-11-16(a)(3) (1975 as amended). Whether or not Respondents intentionally included the PEs' seals and signatures on these designs is of no import - intent is not an element of the violation. The PE's seal and signature certify that the engineer is both competent in the subject matter and responsible for the work product to which they are affixed, and every person involved in any phase of a building project should be able to have unqualified confidence in and reliance on the integrity of any project bearing a PE's seal and signature. Ala. Code § 34-11-7 (e) (1975 as amended).

8. With regard to the alleged violations of Ala. Code § 34-11-16(a)(1) (1975 as amended), Mr. Davis testified that the revisions to the Anchor Bolt Plan produced by Respondents for the Tri City Baptist Church in Millbrook, Alabama, including the erection of a canopy at the front of the building and determination of the member sizes to install, constituted the practice of engineering without a license. (Tr. at 159). The Board's Technical Advisor agreed, testifying that the steel and foundation drawings did not match, and by looking at the foundation plan that he had, things "had been moved," constituting the practice of engineering without a license. (Tr. at 209-10). Mr. Amos written report of August 31, 2015, also noted numerous revisions to the column locations, as well as removal of a column and a set of wind bracing. He stated, "The changes as described should be made on signed and stamped engineering drawings prior to being executed in the field. No drawings presented in this case appear to be the engineered drawings for this structure." (BE #34 at 11).

9. The undersigned agrees that Respondents issued these drawings without having properly obtained an engineer's license or a Certificate of Authorization therefor, in violation of Ala. Code § 34-1 1-1 6(a)(1) (1975 as amended).

10. The undersigned further finds Respondents' above-described actions to be particularly egregious in that, prior to this hearing, Respondent Fitzgerald seemed totally unaware of the potential danger these projects could pose to the persons who enter them if erected according to Respondents' design. Although he is not required as a company owner to obtain the technical or professional training needed for all the services his company offers, he is responsible to ensure that his employees are appropriately trained and supervised, recognize his own limitations, and abide within the confines of the applicable law and the building industry. The evidence showed that Respondent Fitzgerald was disconnected from and generally unaware of the activities in his own company; his focus on obtaining clients and overseeing the erection of projects in the field left him too busy to manage Mr. Harrison, who, left to his own devices, imported PEs' seals and signatures into his project designs. While Respondent Fitzgerald admitted that he is ultimately responsible for Mr. Harrison's actions, the undersigned is also deeply concerned that the Respondent may, in the future, alter other projects in the field, as he did with the Tri City Baptist Church. In that regard, the undersigned cautions the Respondent to strongly consider working under the employment of another properly trained individual and engage in the metal building business solely in a supervised capacity.

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 §§ 34-11-16(a)(1) and (a)(3) (1975 as amended).

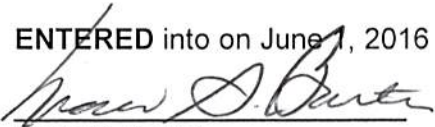
3. Accordingly, it is hereby recommended that Respondents be ordered to cease and desist any and all acts constituting the practice of or offer to practice engineering in the State of Alabama and that they be assessed a civil penalty in the amount of Five Thousand Dollars (\$5,000.00), together with the cost to the Board for these proceedings, in accordance with Ala. Code §§ 34-11-1 6(b) and (g) (1975 as amended) and Ala. Admin. Code r. 330-X-16-.06(1) (2015).

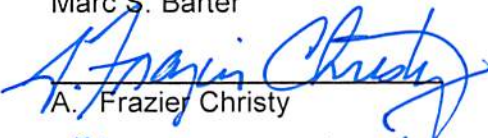
ORDER


The **BOARD**, after deliberation and review, agrees with and adopts as final the Findings of Facts, Conclusion of Law, and Conclusion proposed by Administrative Law Judge, Dana H. Billingsley, and finds the Respondent **GUILTY** of the allegations made against him. The Board modifies the disciplinary recommendation of the Administrative Law Judge, 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 \$25,000 (Twenty-five Thousand dollars) within thirty (30) days of the date of this Order.
3. Respondent shall submit to the Board a check or money order made payable to PE/PLS Fund in the amount of \$5,243.75 (Five thousand two hundred forty three dollars and seventy-five cents) as payment of the hearing cost within thirty (30) days of date of this Order.

ENTERED into on June 1, 2016


Marc S. Barter


A. Frazier Christy


M. Elisabeth Hyde


Randall D. Whorton

RECUSED


Charles P. Willis


Richard G. Grace


Nathan G. Johnson