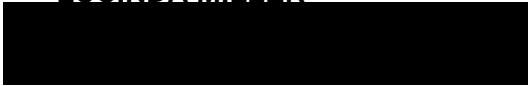


ALABAMA BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

Complainant,

vs.

LUCINDA MILLER



Respondent.



Case No. 2018-01-C

HEARING ORDER

On July 31, 2018, a hearing was convened concerning the allegations filed against Respondent, Lucinda Miller of LumenTek Engineering. The Board was represented by Mr. Benjamin Albritton, Board Counsel, and Administrative Law Judge Dana H. Billingsley presided over the hearing. Respondent did not appear.

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 Lucinda Miller is the Chief Executive Officer of LumenTek Engineering, Inc. ("LumenTek"), a corporation located at 4480 Halls Mill Road, Building 3F, in Mobile, Alabama. LumenTek 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 9, 46-47); (BE #1).¹

2. Respondent Lucinda Miller is also a non-licensee, having at no time been issued a

¹ Upon the Board's motion at the beginning of the hearing, Board counsel offered a notebook marked as Exhibit 1, containing many of the documents to be offered into evidence in support of the Board's testimony, which were previously numbered as Exhibits B-1 through B-29. (Tr. at 7).

license from the Board to practice or offer to practice engineering in the State of Alabama, (Tr. at 9); (BE #1).

3. On or about October 17, 2017, the Board received a Complaint from Mr. Scott Peach, an Alabama licensed professional engineer, alleging that Respondent was providing or offering to provide engineering services in violation of Alabama law. (Tr. at 10-11); (BE #B-1). In particular, the Complaint alleged that Respondent's firm had placed signage in a window at its location in Mobile, Alabama, in the name of "LumenTek Engineering," without employing an Alabama licensed professional engineer and without obtaining a Certificate of Authorization for engineering issued by the Board. (BE #B-1). The Complaint further alleged that Respondent presented a check to Mr. Buddy Persons of Persons Service Company LLC for payment of rental office space at its location in Mobile, Alabama, which was issued on a closed account bearing the name "LumenTek Engineering, Inc." (BE #B-2, B-24). An e-mail to Mr. Persons dated August 31, 2017, also included the following contact information: Lou Miller, PMP, CEO, LumenTek Engineering, 4480 Halls Mill Road Building 3F, Mobile AL 36693, 251-680-2484. (BE #B-22). The Complaint was assigned Case No. 2018-01-C by the Board. (BE #1).

4. On October 18, 2017, the Board's Executive Director, Mr. William R. Huett, notified Respondent via First Class and Certified Mail at her address of 4480 Halls Mill Road, Building 3F, Mobile, Alabama, that a Complaint had been received by the Board and requested that she provide a written response thereto by November 5, 2017. (Tr. at 12); (BE #B-7). The Certified Mail was received by Respondent on or about November 3, 2017. (Tr. at 13); (BE #B-8).

5. Following an investigation of the Complaint, Mr. Huett testified that the Board's Investigative Committee established that there was probable cause to proceed to a hearing on the Complaint. (Tr. at 14-15).

6. By Notice dated June 5, 2018, Respondent was notified via Certified and First Class Mail of the place, date and time of a public hearing to be held concerning her alleged violations

of ALA. CODE § 34-11-16(a)(2) (1975 as amended), which allows the Board to enter an order assessing a civil penalty against any non-licensed person or corporation using or employing the words "engineer" or "engineering" in its name or form of business activity, as specified in detail in the Board's Charges accompanying the Notice. (Tr. at 16); (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. 330X-16-.03(3) (2017) and sufficiently apprised Respondent of the nature of the charges against her 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 in the Notice. The Board was represented by Assistant Attorney General Benjamin H. Albritton. Appearing and testifying on behalf of the Board were Executive Director William R. Huett; Robert Herbert, the Board's Special Investigator; Complainant Mr. Scott Peach, owner of SP Engineering, Inc., in Mobile, Alabama; and Mr. Paul ("Buddy") Persons, Jr., President of Persons Service Company LLC. The Board introduced thirty-three (33) exhibits at the hearing, including subparts, which were admitted into evidence.

9. Respondent's copy of the Notice and Charges served via Certified Mail to her address of record at 2961 Charmingdale Drive West, Mobile, Alabama 36118, was returned to the Board office, marked as "Return to Sender; Unclaimed; Unable to Forward." (Tr. at 16-17); (BE #4). The First Class Mail was not returned. (Tr. at 17). An additional copy of the Board's Notice and Charges was provided to Respondent by Mr. Herbert via Respondent's e-mail address of lucy miller@bellsouth.net, on July 10, 2018 (BE #2), to which she replied via e-mail that same date (BE #3). (Tr. at 57-63).

10. In accordance with ALA. CODE § 41-22-12(d) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.05(3) (2017), having determined from the evidence presented by the Board that Respondent received proper service of notice of the scheduled hearing, the undersigned

proceeded with the hearing in Respondent's absence. (Tr. at 7).

11. Mr. Peach testified that Respondent represented to him that she had an engineering degree and said she "conned" her way into his company by portraying herself as an engineer and a project management professional ("PMP"). (Tr. at 21). He stated that he has been actively working with the Federal Bureau of Investigation ("FBI") concerning his allegations of theft and corporate fraud against Respondent. (BE #B-27). Upon learning that Respondent had opened an engineering firm location, he went to the business and observed the name "LumenTek Engineering" on her door. (BE #B-1 3). Respondent had incorporated under the name "LumenTek Designs," but Mr. Peach stated that the addition of the word "engineering" to the company name was a significant violation of the Board's rules, since she was not degreed or licensed. (Tr. at 23). He then filed a Complaint with the Board. (BE #B-1). Attached to the Complaint is a copy of a bad check written by Respondent on a closed account, as provided to Mr. Peach by Mr. Persons, bearing the name "LumenTek Engineering." (Tr. at 27); (BE #B-2, B-24).

12. Concerning the FBI's investigation, Mr. Peach stated that Respondent replied to an online advertisement for employment at his company as an electrical engineer and was hired in March 2017. He said she produced a forged document which indicated that she was in possession or coming into possession of an engineering firm in Mississippi, called M&W Engineers. Respondent then proposed that Mr. Peach enter into a business venture with her concerning the purported acquisition, at a cost to him of approximately \$250,000.00. (Tr. at 32).

13. Mr. Persons testified that Respondent leased property from his development company in the name of LumenTek Engineering, Inc., but never paid for that lease during the four to five months she occupied that business location. (BE #B26). Respondent signed the four-year lease as President of LumenTek Engineering on July 18, 2017, and offered a certificate of liability insurance to Mr. Persons in the name of Lumen Tek Engineering, Inc. (BE #B-21, B-26). She was subsequently evicted from the property. (Tr. at 36-41).

14. Mr. Persons stated further that Respondent promised to purchase the office furniture in that location from the previous tenant, ABS Systems, but never did so. Mr. Persons said he eventually paid for the furniture himself because he felt responsible for involving that tenant in Respondent's scheme. (Tr. at 42); (BE #B-22). Respondent signed her e-mail correspondence with Mr. Persons regarding this matter as CEO of LumenTek Engineering and used the address lmiller@lumentek.engineering. (Tr. at 43); (BE #8-22).

15. Mr. Herbert testified that, as part of his investigation, he assimilated documents evidencing Respondent's use of the name "LumenTek Engineering," such as the online White Pages Directory and The Real Yellow Pages. (Tr. at 47-48); (BE #B-4, B-5). A search of the Alabama Secretary of State's website shows that LumenTek Design, Inc. was incorporated by Lou Miller on July 28, 2017; the Director's name is listed as Lucinda Miller. (Tr. at 49); (BE #B-19). Respondent communicated with him via her e-mail address of lucy miller@bellsouth.net. (Tr. at 48); (BE #B-11, B14, B-15, B-18).

16. In both e-mail communications and a phone interview with Respondent, Mr. Herbert stated that Respondent denied all of the allegations against her and advised that the directory listing companies, her bank, the signage company, and the company printing her business cards had all mistakenly used the name "LumenTek Engineering," instead of "LumenTek Design." (Tr. at 48, 50-52); (BE #2, 3, B-1 1). He stated that the FBI is investigating Respondent for bank fraud, signing checks on accounts for which she had no signature authority, and advising engineering firms that she can perform or provide certain services, such as negotiating lucrative contracts with Shell Oil Company and M&W Engineers, that she cannot perform. (Tr. at 54); (BE #B27). The District Attorney in Mobile County also has several active cases pending against her. (Tr. at 54).

17. Respondent was arrested on charges of Financial Exploitation of the Elderly and Theft of Property 3rd on March 3, 2017, in Mobile County. (Tr. at 56); (BE #B-IO). Mr. Herbert stated that ten other criminal cases and four civil cases are pending against her in Alabama in 2018

alone. (Tr. at 56-57).

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).

2. It is unlawful for any person to practice or offer to practice engineering in this state or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including, but not limited to, the terms engineer, engineers, engineering, professional engineer, professional engineers, professional engineering, or any modification or derivative thereof, tending to convey the impression that he or she is a professional engineer 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).

3. 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 or corporation for using or employing the words "engineer" or "engineering," or any modification or derivative thereof, in its name or form of business activity in Alabama without having first obtained a license from the Board. ALA. CODE § 34-1 1-16(a)(2) (1975 as amended).

4. The record supports a finding that Respondent had sufficient notice of the place, date and time of the hearing held in this matter and of the charges against her, as evidenced by service via First Class Mail of the Notice and Board's Charges dated June 5, 2018, to Respondent's address at 2961 Charmingdale Drive West, Mobile, Alabama 36118, and via electronic mail to her address of lucv miller@bellsouth.net on July 10, 2018. (Tr. 16-17, 57-63); (BE 2, 3).

5. Although Respondent categorically denied doing anything wrong or committing a crime, stating that she "did not do one job under LumenTek Engineering" (Tr. at 48, 50; BE #2, 3, B-1

1), the evidence of record overwhelming proves that Respondent advertised under the name "LumenTek Engineering, Inc." (BE #B-4, B-5, B-13), that she entered into business transactions utilizing that name (BE #B-2, B-21, B-22, B-24, B-26), and that she represented herself to be the President and CEO of that business entity (BE #B-22, B-26).

6. LumenTek Engineering, Inc. does not employ an Alabama licensed professional engineer and has not obtained a Certificate of Authorization for engineering issued by the Board. Neither is Ms. Miller a licensed professional engineer with this Board. Accordingly, in the absence of said licensure, the undersigned finds that Respondent's actions as described hereinabove constitute violations of ALA. CODE § 34-11-16(a)(2) (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 Respondent's conduct constitutes violations of ALA. CODE § 34-11-16(a)(2) (1975 as amended).

3. Accordingly, it is hereby recommended that Respondent 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 the Respondent 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) (2017).

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 her, but modifies the proposed Recommendation, and **ORDERS** the following:

1. Respondent shall **CEASE AND DESIST** any and all acts constituting the practice of or the offer to practice of engineering in the State of Alabama
2. Respondent shall submit a check or money order to the Board made payable to the State of Alabama General Fund in the amount of \$2,500 (two thousand five hundred dollars) as a civil penalty within thirty (30) days of this Order.
3. Respondent shall submit a check or money order to the Board made payable to the PE/PLS Fund in the amount of \$1,817.50 (one thousand eight hundred and seventeen dollars and fifty cents) for the cost of the hearing within thirty (30) days of this Order.

ENTERED into on September 11, 2018.


M. Elisabeth Hyde


Randall D. Whorton


Marc S. Barter


Joseph F. Breighner Jr.


Nathan G. Johnson


Richard G. Grace

DID NOT ATTEND
M. Helen Adams-Morales