

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



IN THE MATTER OF:)

Dennis Stanley Nelson)



Respondent)

Case No. 2013-21-B

FINAL ORDER

On April 21, 2014 a hearing was convened concerning the allegations filed against Respondent, Dennis Stanley Nelson. 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.

PROPOSED FINDINGS OF FACT

1. Respondent Dennis Stanley Nelson is a licensed Professional Engineer ("PE"), license number 15936, and was so licensed at all times relevant to the matters stated herein. (Tr. 9);

(BE #J-1).¹ Respondent's license was originally issued on September 26, 2003, and lapsed

¹Upon the Board's motion at the beginning of the hearing, the Board offered a notebook marked as Exhibit 1, containing all of the documents to be offered into evidence in support of its testimony, which were previously numbered as Exhibits R-1, J-1 through J-10 and B-1 through B-7. (Tr. 8).

on December 31, 2009, due to failure to renew. Respondent's license is currently in expired status as of December 31, 2013, following four (4) years of lapsed status. (Tr. 9-10).

2. On May 14, 2013, the Board's Executive Director, Regina Dinger, initiated a Complaint against Respondent, alleging that he had violated ALA. CODE § 34-11-11(a)(5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)(1) and -.08 (2013) by having his license to practice engineering revoked by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects (the "Missouri Board") for failure to comply with the terms of discipline set forth in a September 13, 2011 Order. (BE #J-1). The Complaint alleges that the Idaho Board of Licensure for Professional Engineers and Land Surveyors (the "Idaho Board") then took reciprocal disciplinary action against Respondent relative to the disciplinary action revoking his Missouri license. /d.

3. The Board's Complaint was assigned Case No. 2013-21-B and was sent to Respondent's address of record- [REDACTED]—via correspondence dated May 16, 2013, by First Class and Certified Mail. (Tr. 12-13, 21-22); (BE #J-1, J-8). The Board's letter requested a response to the Complaint, including copies of the documents related to the disciplinary action taken against Respondent by the Idaho Board and those relative to any action taken against Respondent in any other jurisdiction, by May 31, 2013. (BE #J-8). The Certified Mail was received by Respondent on May 20, 2013. (Tr. 22); (BE#J-9).

4. On June 12, 2013, Respondent replied to the Board's Complaint, stating that all of the disciplinary actions taken against him resulted from an investigation by the West Virginia State Board of Registration for Professional Engineers (the "West Virginia Board") involving "the question of a steel building roof purlin system," which required him to wait for manufacturer's documents before responding to the Board. His letter states that the West Virginia Board was unhappy with the delayed response, and "[t]he other complaints were because of a lack of notice" regarding this disciplinary action. (BE #B-1).

5. By Notice dated March 18, 2014, Respondent was notified via Certified and First Class Mail of the date and time of a public hearing to be held concerning his alleged violations of the Board's licensure act and administrative rules, which were specified in detail in the Board's Charges accompanying the Notice. (Tr. 13-14); (BE #1). The Board's Charges were signed by the Executive Director on March 18, 2014, and contained a single charge of Unethical Conduct – Disciplinary Action in Another Jurisdiction, as a result of the revocation of Respondent's Missouri PE license on August 28, 2012, and the revocation of his Idaho PE license on January 29, 2013. (BE #1).

6. The Board's Charges allege that these actions constitute violations of ALA. CODE § 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)1. and 5. (2013), violation of the rules of professional conduct or misconduct in the practice of engineering, and ALA. CODE § 34-11-11(a)(5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2013), which permit the Board to take disciplinary action, including revocation, suspension or the levy of an administrative fine, against a licensee for committing an offense in another jurisdiction that resulted in the revocation, suspension or voluntary surrender, to avoid disciplinary proceedings, of a license or certificate of licensure, including any agreement or stipulation executed in order to avoid formal disciplinary proceedings. (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 Respondent of the nature of the charges against him and of the date, time and place of the hearing. (BE #1).

8. Respondent received the Notice and Charges via Certified Mail on March 21, 2014, at the following address: [REDACTED] (Tr.14); (BE #1, R-1). Respondent did not appear at the hearing. (Tr. 7). In accordance with ALA. CODE§ 41-22-

12(d) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.05(3) (2013), having determined from the evidence presented by the Board that Respondent received proper service of notice of the scheduled hearing, the undersigned Administrative Law Judge proceeded with the hearing in Respondent's absence. (Tr. 7-8, 14-15).

9. The Board solicited testimony from the following individuals at the hearing: Executive Director Regina Dinger; William R. Huett, Assistant Executive Director and Chief Investigator; and Board Investigator Robert Herbert.

10. Ms. Dinger testified regarding the issuance of the Complaint, the Board's Charges and the March 18, 2014 Notice to Respondent informing him of the Charges and of the date, time and place for the hearing. (Tr. 11-14); (BE #1, J-1, J-8). The Board became aware of the Missouri Board's actions against Respondent through the National Council for Examiners of Engineers and Surveyors ("NCEES"), which maintains a database that includes violations reported by other states regarding the Board's own licensees. (Tr. 10, 16). Ms. Dinger stated that Respondent remained under the Board's authority even when his license was in lapsed status, and that he had designated [REDACTED] as his primary address for the Board. (Tr. 10, 13).

11. Mr. Huett testified that once a Complaint is opened by the Board's Executive Director, he is responsible to investigate the Complaint and assigned it to the Board's Investigator, who provided the results of his investigation to the Investigative Committee assigned to this matter. (Tr. 11, 15, 23). In particular, Mr. Huett stated that the Board received a copy of the Idaho Board's Stipulation and Consent Order for Respondent, dated February 5, 2013, and its Final Order of February 5, 2013. (Tr. 16-19); (BE #J-2). Pursuant to the Consent Order, Respondent's PE license in Idaho was revoked due to the revocation of his Missouri PE license for failure to comply with several requirements of previously issued

orders from the Missouri Board, including Respondent's failure to complete the number of professional development hours ("PDHs") required in Missouri, failing to respond to a request for evidence of compliance with the PDH requirement, and failure to maintain an active and current PE license in Missouri. (Tr. 19-20); (BE #J-2).

12. Mr. Huett testified that he requested information from the Missouri Board, which was provided in correspondence dated March 18, 2014. (Tr. 19); (BE #J-3, J-4, J-10). That correspondence revealed that on August 28, 2012, the Missouri Board revoked Respondent's PE license for the above-stated reasons, following a June 30, 2009 Settlement Agreement and Consent Order (BE #J-7); included a copy of a May 25, 2010 order of discipline based on violations of the June 2009 Order (BE #J-6); and included another order of discipline dated September 13, 2011, which suspended Respondent's license for three (3) years, to be followed by a probationary period of one (1) year, four (4) months and sixteen (16) days (BE #J-5). (Tr. 19-21); (BE #J-4).

13. Mr. Herbert testified that he conducted a telephone interview with Respondent on July 30, 2013, during which Respondent stated that the West Virginia Board's investigation in 2004 initiated the actions taken against him by all the other state licensure boards. (Tr. 25). Mr. Herbert stated that Respondent was often difficult to reach by telephone, but was relatively cooperative throughout the investigative process. (Tr. 26). Mr. Herbert also assimilated documents from the West Virginia, Kansas, Wisconsin, Oklahoma, North Carolina and Minnesota licensure Boards regarding Respondent.

14. On or about November 19, 2004, Respondent's West Virginia license was suspended for failure to cooperate with that Board concerning an audit of Respondent's PDHs. In 2005, Respondent entered into a Consent Order and was fined by the West Virginia Board for

failure to cooperate with an investigation as to whether he was practicing engineering without a license. (Tr. 25, 27-28); (BE #B-2, B-3).

15. On or about September 11, 2009, Respondent's Wisconsin PE license was suspended for two (2) years for failure to comply with an August 16, 2007 order requiring Respondent to successfully complete an engineering ethics distance learning course. (BE #B-2, B-4). Respondent's license was reinstated and reprimanded pursuant to a Final Decision and Order of the Engineering Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors for the State of Wisconsin, dated January 31, 2013, following Respondent's successful completion of all continuing education requirements and payment of costs. (Tr. 28); (BE #B-4).

16. Respondent entered into a Consent Order with the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (the "Oklahoma Board") on January 24, 2008, reprimanding him for certifying on a license renewal application that he had never been disciplined in any other jurisdiction, despite disciplinary actions taken against him in Wisconsin and West Virginia. Respondent was also suspended until such time as he complied with the orders issued by those two states. (Tr. 28-29); (BE #B-2, B-5).

17. On January 3, 2011, Respondent's application to the Kansas State Board of Technical Professions (the "Kansas Board") for renewal of his expired PE license was denied due to disciplinary actions taken against him in West Virginia, Wisconsin, Oklahoma and Missouri, as well as the practice of engineering in Kansas without a license on January 21, 2010. (Tr. 27-28); (BE #B-2).

18. The North Carolina Board of Examiners for Engineers and Surveyors (the "North Carolina Board") issued a Second Decision and Order against Respondent on May 18, 2011, suspending Respondent's license for failure to pay a civil penalty of \$1,000.00 levied on January 18, 2011, for the suspension of his PE license in another jurisdiction and being placed

on probation. (BE #B-6). On November 13, 2009, the North Carolina Board reprimanded Respondent and levied a civil penalty against him for submitting false information on his renewal form. (Tr. 29-30); (BE #B-6).

19. On April 18, 2013, the State of Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (the "Minnesota Board") issued a Cease and Desist Order and Notice of Right to Hearing to Respondent for noncompliance with an ethics course requirement imposed under a Stipulation and Order issued by the Board on December 2, 2011, and failure to report that disciplinary action on his 2012 renewal application with the Minnesota Board. (Tr. 30); (BE #B-7). Respondent also held himself out to the public and practiced engineering without a license in Minnesota on July 20, 2012, by signing and certifying certain engineering documents. The 2011 Stipulation and Order was imposed due to Respondent's failure to report various disciplinary actions taken against him in Missouri, Wisconsin and North Carolina. /d.

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 within the state. ALA. CODE§ 34-11-2(b) (1975 as amended).

2. The Board is empowered to reprimand, censure, fine or place on probation any licensed professional engineer or to suspend, refuse to renew or revoke the certificate of any licensee for violation of the rules of professional conduct prescribed by the Board, misconduct in the practice of engineering or engaging in any conduct that discredits or tends to discredit the profession of engineering. ALA. CODE§ 34-11-11(a)(2) (1975 as amended); ALA. ADMIN. CODE r. 330-X-14-.06(a)1. and 5. (2013). Consequently, the Board may take action against any licensee as the result of an offense in another jurisdiction resulting in the

revocation, suspension or voluntary surrender, to avoid disciplinary proceedings, of a license, including any agreement or stipulation entered into by a licensee in lieu of formal disciplinary proceedings. ALA. CODE § 34-11-11(a)(5) (1975 as amended); ALA. ADMIN. CODE r. 330-X-14-.08 (2013).

3. Respondent's PE licenses have recently been revoked in Missouri and Idaho and have been suspended for various periods in West Virginia, Missouri, North Carolina, Wisconsin and Oklahoma since 2004. Some of these actions occurred pursuant to provisions in the other states' licensing laws similar to that of ALA. CODE § 34-11-11(a)(5) (1975 as amended). However, the undersigned finds that Respondent's assertions that all of the actions against him stemmed from the West Virginia Board's investigation of a steel building roof purlin system and "a lack of notice" of the West Virginia Board's disciplinary action to other states is not supported by the evidence. (BE #B-1). The disciplinary actions taken against Respondent in these states have been initiated not only by Respondent's failure to report actions taken against his licenses in other jurisdictions, but also for the practice of engineering without a license and failure to maintain sufficient PDHs, cooperate with Board investigations, satisfy the terms and conditions of previous consent orders and stipulations, and maintain licensure.

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 him, as evidenced by the delivery of the Notice and Board's Charges dated March 18, 2014, to Respondent via Certified Mail on March 21, 2014, at his address of record with the Board. (Tr. 13-14); (BE #1, R-1). *See* ALA. CODE § 34-11-11(h) (1975 as amended) ("... a copy of the charges, together with the notice of the time and place of the hearing, shall be personally served on or mailed to the last known address of the individual licensee... at least 30 days before the date fixed for

hearing"). Respondent failed to appear at the hearing or contact the Board in response to the Notice of Hearing and Charges. (BE #1).

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 engineering, including the Rules of Professional Conduct, which prohibit the licensee from violating any provision of Alabama law regulating the practice of engineering and engaging in any conduct that discredits or tends to discredit the practice of the profession of engineering. *See* ALA. ADMIN. CODE r. 330-X-14-.06(a)1, and 5. (2013).

2. Respondent has committed violations of the PE licensure laws and regulations in a number of states, including Missouri, Idaho, West Virginia, Wisconsin, Kansas, Oklahoma, North Carolina and Minnesota, which constitute violations of Alabama law regulating the practice of engineering, pursuant to ALA. CODE §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2013), including the Rules of Professional Conduct. In particular, Respondent has engaged in the practice of engineering without a license in Kansas, West Virginia and Minnesota between 2005 and 2012. (BE #B-2, B-3, B-7).

3. 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 §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN. CODE r. 330- X-14-.06(a)1. and 5. and -.08. (2013).

4. Accordingly, it is hereby recommended that Respondent's license to practice the profession of engineering in the State of Alabama be REVOKED, in accordance with ALA. CODE §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN CODE r. 330-X-14-.08 (2013), and that a fine of \$2,500.00 be imposed on Respondent, in accordance

with ALA. CODE§ 34-11-11(i) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2013), said fine to be paid within thirty (30) days of the date of a Final Order issued by the Board.

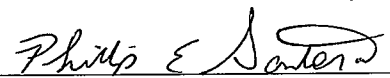
ORDER

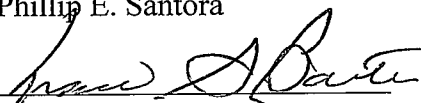
The Board, after deliberation and review, agrees with and adopts as final the Findings of Facts, Conclusions of Law and Conclusion and Recommendation proposed by Administrative Law Judge, Dana H. Billingsley.

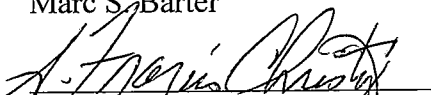
The Board hereby finds Respondent **GUILTY** of the allegations made against him and hereby **ORDERS** as follows:

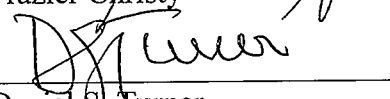
1. Respondent's professional engineer license is revoked and he shall immediately **cease and desist** any and all acts constituting the practice of, or offer to practice of engineering in the State of Alabama.
2. Respondent shall submit to the Board via check or money order a fine of Two Thousand Five Hundred Dollars (\$2,500.00) made payable to the PE & LS Fund within thirty (30) days of the date of the Final Order.
3. Respondent shall submit to the Board via a check or money order made payable to PE & LS Fund \$1,140.00 (One Thousand One Hundred & Forty dollars) for the cost of hearing within thirty (30) days of date of Final Order.

ENTERED this the 18th day of June, 2014


Phillip E. Santora


Marc S. Barter


Frazier Christy


Daniel S. Turner

DID NOT ATTEND

Earl R. Foust

RECUSED

Charles P. Willis


Liz Hyde