

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

IN THE MATTER OF:

Christopher A. Palumbo



Respondent

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Case No. 2013-33-B

FINAL ORDER

On May 19, 2014 a hearing was convened concerning the allegations filed against Respondent, Christopher A. Palumbo. The Board was represented by Mr. Benjamin Albritton, Board Counsel. Administrative Law Judge Dana A. Billingsley presided over the Hearing. Mr. Maslan 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.

FINDINGS OF FACT

1. Respondent Christopher Palumbo is a licensed Professional Engineer ("PE"), license number 14595, and was so licensed at all times relevant to the matters stated herein. (Tr. 10); (BE #J-1). Respondent was initially licensed on January 5, 1996; his license remained in active status until July 9, 2013, at which time it was suspended for failure to respond to the Board's request for documentation in support of the professional development hours listed on his 2013 license renewal. (Tr. 10, 31); (BE #6). Respondent's license was later returned to active status on July 30, 2013, but is currently in lapsed status

as of December 31, 2013, due to failure to renew. (Tr. 10-11). Respondent has never been subject to disciplinary action by this Board. (Tr. 11).

2. On October 23, 2012, Respondent submitted an on-line renewal of his PE license for the calendar year 2013. (Tr. 55); (BE #21). As a condition of licensure, licensees are required to take annually fifteen (15) hours of continuing education ("CE") or Professional Development Hours ("PDHs"), which are to be reported on the renewal application form developed by the Board. ALA. ADMIN. CODE r. 330-X-13-.02(4)(a) (2013). Respondent's receipt for his online 2013 renewal shows that he selected the option certifying that he had met the continuing professional competency requirement of fifteen (15) hours of professional development, and he claimed thirty-four (34) PDHs during 2012. (BE #21).

3. After completion of the renewal process, the Board randomly selects a percentage of its licensees for audit in order to monitor their compliance with the PDH requirement. (Tr. 12). See ALA. ADMIN. CODE r. 330-X-13-.02(14) (2013).

4. On February 27, 2013, the Board notified Respondent via electronic mail to his last e-mail address of record with the Board that he had been randomly selected for an audit based on his 2013 license renewal and requested that he provide copies of the documents supporting the professional competency credits he earned in 2012 in support of that renewal. (Tr. 12-13, 23-25); (BE #3). In said correspondence, the Board requested that Respondent provide a log showing a detailed list of the activities claimed and copies of attendance verification records, as required under ALA. ADMIN. CODE r. 330-X-13-.02(12) (2013), by April 1, 2013. (Tr. 25, 27); (BE #3).

5. Respondent failed to respond to the Board's correspondence of February 27, 2013. (Tr. 16, 24, 26). The Board then forwarded a second notice of audit selection to

Respondent via First Class and Certified Mail, dated April 29, 2013, to Recipient's address of record at [REDACTED] requesting that Respondent provide the requested documentation by June 1, 2013. (Tr. 27-28); (BE #4). Respondent's receipt of said letter was evidenced by a Certified Mail receipt bearing the signature of Janet L. Palumbo, dated May 2, 2013. (Tr. 28); (BE #5). The letter advised Respondent that failure to respond to the Board's request within sixty (60) days could result in the suspension of his PE license until such time as the requested documentation is provided. (Tr. 28); (BE #4).

6. Respondent did not respond to the Board's April 29, 2013 letter. (Tr. 16, 28).

7. On July 9, 2013, the Board's Executive Director, Regina Dinger, initiated a Complaint against Respondent and on July 10, 2013, sent a notification of the Complaint via First Class and Certified Mail to Respondent's address of record at [REDACTED] [REDACTED] (Tr. 14, 29-30); (BE #J-1, 6). The letter requested that he provide a written response no later than July 25, 2013, concerning his failure to provide the requested documentation in support of the continuing professional competency credits he obtained for his 2013 license renewal and to provide any additional information that could aid in the investigation of the Complaint. (BE #6).

8. On July 22, 2013, Respondent forwarded correspondence addressed to the Board's Assistant Executive Director, Mr. Rick Huett, in response to the notice of Complaint and provided documentation to support his compliance with the continued professional competency requirements. (Tr. 37-38); (BE #7-11).

9. By Notice dated March 31, 2014, Respondent was notified via Certified and First Class Mail of the date and time of a public hearing to be held on May 19, 2014,

at 9:00 a.m. at the Board's office in Montgomery, Alabama, concerning his alleged violations of the Board's licensure act and administrative rules, which were specified in detail in the Board's Charges accompanying the Notice. (Tr. 16); (BE #2). The Board's Charges were signed by the Executive Director on March 31, 2014, and contained a single charge of unethical conduct for failure to respond in a timely manner to the Board's audit of professional development requirements. (Tr. 16); (BE #2). The Notice further stated that on July 24, 2013, "Respondent provided documentation that supported attendance at various continuing professional competency activities, but did not identify the number of [PDHs] awarded for completion of the activity." (Tr. 16-17); (BE #2).

10. The Board's Charges alleged that such acts constituted possible violations of ALA. CODE§ 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)1. (2013), violation of the rules of professional conduct or misconduct in the practice of engineering; ALA. ADMIN. CODE r. 330-X-13-.02(12) (2013), governing the licensee's responsibility to maintain records that can be used to support claimed CE credits; ALA. ADMIN. CODE r. 330-X-14-.06(a)15. and 330-X-13-.02(14)(a) and (b) (2013), governing the failure to respond to Board inquiries, including renewal audits, within sixty (60) days of receipt of such inquiry; and ALA. CODE§ 34-11-11(a)(1) (1975 as amended), empowering the Board to impose disciplinary action for the practice of fraud or deceit in the renewal of a certificate of licensure. (BE #2).

11. 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. (BE #2).

12. 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. The Board introduced twenty-one (21) exhibits at the hearing, which were admitted into evidence without objection. Respondent appeared at the hearing and provided testimony on his own behalf, but did not offer any documentary evidence for the record.

13. Ms. Dinger testified regarding the audit process, issuance of the Complaint, the Board's Charges and the March 31, 2014 Notice to Respondent informing him of the Charges and of the date, time and place for the hearing. (Tr. 12-17); (BE #J-1, 2, 6). Ms. Dinger stated that the Board opened a Complaint against Respondent due to his failure to respond to the Board's February 27, 2013 and April 29, 2013 notifications, which Complaint was forwarded to the Board's Investigator. The Investigator then provides a report of his findings to the Investigative Committee for review, and the Committee provides a recommendation as to how the matter should proceed. (Tr. 13-15). In the event the Committee recommends that the Board proceed with a formal enforcement action, Ms. Dinger stated that she prepares the Charges, which are also forwarded to the respondent. (Tr. 15-16); (BE #2).

14. On cross-examination, Ms. Dinger clarified that if a licensee fails to respond to the Board's audit requests, the Board does not consider the licensee to be legally practicing the profession of engineering and typically suspends the license until such time as the licensee provides a response. (Tr. 19). Under further examination, she stated that a licensee cannot practice engineering on a lapsed license. A lapsed license

can remain in that status for up to four (4) years, at which time it is converted to an expired license. The Board has continuing jurisdiction over all lapsed licenses. (Tr. 21).

15. Mr. Huett testified that once a Complaint is opened by the Board's Executive Director, he is responsible to investigate the Complaint. Upon Respondent's failure to respond to the Board's April 29, 2014 letter, Mr. Huett assigned the case to the Board's Investigator, who provided the results of his investigation to the Investigative Committee assigned to this matter. (Tr. 22, 31, 33); (BE #4). He further stated that the Board retains authority over lapsed licenses because they have the ability to be reinstated. (Tr. 34).

16. Investigator Herbert testified that he spoke with Respondent by telephone and reviewed the documentation submitted on July 22, 2013, in support of Respondent's claimed PDHs; however, certain information was still missing regarding the number of PDHS assigned to each event, and Mr. Herbert stated that he requested additional information from Respondent. (Tr. 38); (BE #7).

17. In support of his claimed PDHs from attendance at the AWEA Windpower 2012 Conference and Exhibition in Atlanta, Georgia, from June 3-6, 2012, Respondent provided a copy of an e-mail confirming his registration at the Conference, an Exhibition Schedule and the hotel charges from his stay in Atlanta. (Tr. 39); (BE #7, 8). Mr. Herbert stated that the information did not evidence which presentations Respondent attended or how many PDHs were designated by AWEA for the event. (Tr. 40); (BE#8).

18. In support of his claimed PDHs from attendance at the BIO International Conference in Boston, Massachusetts, from June 18-21, 2012, Respondent provided a copy of his Express Registration Confirmation, his flight information and a schematic of the exhibition hall. (Tr. 40-41); (BE #7, 9). Mr. Herbert stated that this information also did not evidence

which presentations Respondent attended or how many PDHs were designated by BIO for the event. (Tr. 41); (BE #9). Respondent also appeared to be an exhibitor at that event, rather than an attendee. (Tr. 41).

19. In support of his claimed PDHs from attendance at the CanWEA Annual Conference and Exhibition in Toronto, Ontario, Canada, from October 14-17, 2012, Respondent provided a copy of an e-mail thanking him for his participation as an Exhibitor, his flight information and the agenda for the event. (Tr. 42); (BE #7, 10). Mr. Herbert stated that the information did not evidence which presentations Respondent attended or how many PDHs were designated by CanWEA for the event. (Tr. 42); (BE #10).

20. In support of his claimed PDHs from attendance at the DBIA Conference and Expo in New Orleans, Louisiana, from November 7-9, 2012, Respondent provided a copy of the conference schedule, his flight information and his registration. (Tr. 42-43); (BE #7, 11). The conference schedule states, 'The 2012 Design-Build Conference & Expo will provide attendees up to **12 hours of continuing education hours**. Additional hours can be earned by attending our pre-conference education courses... ' (BE #11). However, no verification as to the number of hours earned by Respondent at the event was provided. (Tr. 43).

21. Mr. Herbert stated that he contacted Respondent again by telephone on August 1, 2013, to request additional information, to which Respondent responded by e-mail on August 7, 2013. (Tr. 43-44); (BE #12). The response included a copy of an e-mail confirming Respondent's registration for the AWEA Windpower Conference (BE #13, 14) and a copy of Respondent's registration confirmation (BE #15), but no PDHs were provided. (Tr. 45-49). Likewise, Respondent provided an e-mail regarding the

CanWEA Conference that included a receipt for Recipient's registration and stated, "Certificates of attendance were not provided for CanWEA2013...." (BE #16). He also provided a copy of his invoice for the CanWEA Conference, but no PDHs. (Tr. 50-51); (BE #17).

22. On August 14, 2013, Mr. Herbert received a certificate of attendance issued by AWEA for the 2012 Windpower Conference, which did not include an award of PDHs or CEs. (Tr. 52-53); (BE #18, 19, 20). Respondent did not respond further to Mr. Herbert's request for additional information. (Tr. 54).

23. On cross-examination, Mr. Herbert clarified that the Board determines whether sufficient information has been provided to satisfy the Board's audit requirements; his sole function is to gather as much information as possible and provide that to the Investigative Committee, which evaluates the documentation. ALA. ADMIN. CODE r. 330-X-13-.02(5)-(8) enumerate the activities and criteria which satisfy the professional development requirement and the available credits. (Tr. 56-59). Acceptable documentation of PDHs is enumerated in ALA. ADMIN. CODE r. 330-X-13-.02(12). (Tr.61).

24. Respondent testified that he has been a licensed PE in multiple states for over thirty (30) years and has never had any disciplinary action taken against him. He has attempted to provide as much information as possible to create a sense that he did obtain the PDHs claimed over the number of days that the conferences took place. He has not practiced engineering in Alabama for over ten (10) years, so he decided not to renew his license after 2012. (Tr. 63-64). He stated that he has never provided similar documentation in other states

in support of an audit request and does not know if it would be acceptable elsewhere. (Tr. 64).

CONCLUSIONS OF LAW

1. The Alabama Legislature created the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors for the purpose of safeguarding life, health and property and promoting the public welfare with regard to the practice of engineering within the state. ALA. CODE § 34-11-2(b) (1975 as amended). To ensure these mandates are met, the Board requires licensees to demonstrate continuing professional competency to maintain, improve or expand their skills and knowledge of the practice of professional engineering as a condition for license renewal. ALA. ADMIN. CODE r. 330-X-13-.02(1), (2) (2013).

2. ALA. ADMIN. CODE r. 330-X-13-.02(12) (2013) requires a licensee to maintain records supporting the CE credits claimed. Records required include, but are not limited to, information detailing the type of activity claimed, sponsoring organization, location, duration, speaker or instructor, credits earned and evidence of attendance. The rule provides that these records must be maintained for a period of four (4) years and must be furnished by the licensee upon the Board's request for audit verification purposes. */d.*

3. 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 any provision of Alabama law regulating the practice of engineering or for any violation of the administrative rules prescribed by the Board. ALA. CODE § 34-11-11(a)(2) (1975 as amended). *See also* ALA. ADMIN. CODE r. 330-X-14-.06(a)1, (2013).

4. Respondent's license remained in active status until December 31, 2013, and he remains answerable to the Board for the certifications he made on October 23, 2012 when renewing his Professional Engineer license. (BE #21).

5. Respondent contends that, in an effort to cooperate with the Board, he exhausted every possible means of providing the requested information in support of the professional competency credits he claimed on his 2013 license renewal; however, he did not appear to understand how the information he provided was insufficient for purposes of determining the number of credits claimed in support of his 2013 renewal application.

6. With the exception of the DBIA Conference and Expo in New Orleans, Louisiana, it is not apparent from the documentation provided by Respondent whether his attendance at these conferences made him eligible for professional competency credits or how many hours he actually spent in attendance at a qualifying seminar or presentation at each conference, and thus, the number of PDHs for which he could be approved. (BE #11). For example, over a three (3) day conference, the Board would not know, in the absence of information designating PDHs from the sponsoring organization or a schedule of events clearly showing which presentations Respondent attended, whether to credit Respondent with four (4), eight (8) or ten (10) hours each day. Respondent's conference schedule for the DBIA Conference and Expo states that he was eligible for twelve (12) CE hours over the course of four (4) days, but he provided no proof that such hours were awarded, and he did not claim either the DBIA or BIO conferences on his 2013 license renewal. (BE #21).

7. The evidence of record thus supports a finding that Respondent failed to respond to the Board's requests for documentation in support of the professional

development hours listed on his 2013 license renewal within sixty (60) days of receipt of such inquiry, in violation of ALA. ADMIN. CODE r. 330-X-13-.02(14)(b) and 330-X-14-.06(a)15. (2013), and that he failed to maintain records which can be used to support the PDHs claimed, in violation of ALA. ADMIN. CODE r. 330-X-13-.02(12), as specified in the Board's Charges of March 31, 2014. (BE #2).

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 licensee's responsibility to timely provide, upon request, records that can be used to support claimed Professional Development Hours. *See* ALA. ADMIN. CODE r. 330-X-14-.06(a)15, and 330-X-13-.02(14)(b) (2013).

2. As shown above, on the basis of the evidence of record and the testimony presented, it is hereby concluded that Respondent's failure to produce records in support of the Professional Development Hours for which he certified compliance with the Board's CE requirements on his 2013 license within sixty (60) days of receipt of such request constitutes violations of ALA. CODE § 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)1. (2013) (violation of the laws and rules and regulations of the Board), ALA. ADMIN. CODE r. 330-X-13-.02(12) (2013) (requiring licensees to maintain records that can be used to support claimed CE credits), and ALA. ADMIN. CODE r. 330-X-14-.06(a)15. and 330-X-13-.02(14)(b) (2013) (failure to respond to a Board inquiry within sixty (60) days of receipt of such inquiry).

3. Accordingly, it is hereby recommended that Respondent be placed on probation for one (1) year and pay a fine in the amount of \$750.00 for said violations, together with

the cost to the Board for these proceedings, in accordance with ALA. CODE § 34-11-16(g) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2013), within thirty (30) days of the date of a Final Order issued by the Board.

ORDER

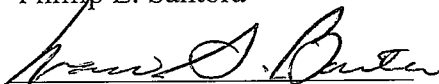
The Board, after deliberation and review, agrees with and adopts as final the Findings of Facts, Conclusions of Law and Conclusion proposed by Administrative Law Judge, Dana H. Billingsley. The Board however determined to **MODIFY** the Disciplinary Recommendation of the Administrative Law Judge and changed the fine amount to be consistent with Board precedent in similar disciplinary matters.

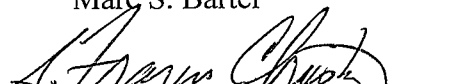
The Board hereby finds Respondent **GUILTY** of the allegations made against him and hereby **ORDERS** as follows:

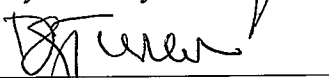
1. Respondent shall submit to the Board via check or money order a fine of One Thousand Dollars (\$1,000.00) made payable to the PE & LS Fund within thirty (30) days of the date of the Final Order.
2. Respondent shall submit to the Board via a check or money order made payable to PE & LS Fund \$1,192.50 (One Thousand One Hundred & Ninety-Two dollars and Fifty cents) 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


Charles P. Willis

RECUSED


Liz Hyde