

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

IN RE THE MATTER OF:

**RICHARD ROGERS
ROGERS CONSTRUCTION ENGINEERING**

CASE NO. 2013-10-C

FINAL ORDER

On July 11, 2013 the Alabama Board of Licensure for Professional Engineers and Land Surveyors (hereinafter referred to as "Board") convened for an Administrative Hearing concerning the allegations filed against Richard Rogers and Rogers Construction Engineering. 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 Rogers Construction Engineering ("Rogers Construction") is a corporation located at 2910 Monroe Street in Columbia, South Carolina. Rogers Construction 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.

2. Respondent Richard Rogers is the President of Rogers Construction and is also a non-licensee, having at no time been issued a license from the Board to practice or offer to practice engineering in the State of Alabama.

3. On December 28, 2012, the Board received a Complaint from Mr. Bob Barnett regarding Respondents providing or offering to provide engineering services in Alabama without employing an Alabama licensed professional engineer or obtaining a Certificate of Authorization from the Board. In particular, the Complaint alleged that Respondents were hired by an insurance company to do home inspections after the Tuscaloosa tornadoes and that claims were paid based on Mr. Rogers' professional written opinion, on which his South Carolina professional engineering seal was placed. The Complaint was assigned Case No. 2013-10-C by the Board.

4. By Notice dated May 21, 2013, 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 § 34-11-15(a) (1975 as amended), practicing, offering to practice or holding oneself out as qualified to practice engineering in this state or using in connection with one's name any title or description, including the term "engineer, engineers, engineering, or professional engineer, professional engineers, or professional engineering" without being licensed or exempted from licensure by this Board; and Ala. Code § 34-11-16(a)(1) (1975 as amended), engaging in the practice or offer to practice of engineering in this state without being licensed, which were specified in detail in the Board's Charges accompanying the Notice.

5. The Board's Charges state further that Respondent was employed by The Hartford to evaluate repairs performed on a home in Tuscaloosa, Alabama, that sustained tornado damage and that Respondent traveled to Tuscaloosa to collect the information necessary for his findings, which he then prepared at his office in South Carolina. "Respondent provided the insurance company a report of his findings that contained the firm name 'Rogers Construction Engineering', his South Carolina professional engineer seal, and

the signature block 'Richard J. Rogers, PE, M.B.A.' without employing an Alabama licensed professional engineer and obtaining a certificate of authorization for engineering from the Board."

6. 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 (2012) 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.

7. 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 Assistant Executive Director and Chief Investigator William R. Huett and Robert Herbert, a Special Investigator with the Board. The Board introduced seventeen (17) exhibits, including subparts, which were admitted into evidence.

8. Respondents received the Notice and Charges via Certified Mail on June 29, 2013, at the following address: 2910 Monroe Street, Columbia, South Carolina. Respondent Rogers also confirmed to Mr. Herbert via telephone on July 10, 2013, that he would not attend the hearing and, in fact, did not appear.

9. In accordance with Ala. Code § 41-22-12(d) (1975 as amended) of the Alabama Administrative Procedure Act ("AAPA"), having determined from the evidence presented by the Board that Respondents received proper service of notice of the scheduled hearing, the undersigned proceeded with the hearing in Respondents' absence.

10. Mr. Barnett testified that he has been a licensed structural engineer since 1971, and that he filed the Complaint in this matter after one of his engineers went to the residence in Tuscaloosa and provided the stamped letter from Respondents to the resident's insurance company, opining as to the repairs needed for the home. Mr. Barnett stated that, in his opinion, Respondent's use of his South Carolina professional engineers seal and stamp constituted the

unlicensed practice of engineering in the state. He was notified of receipt of his Complaint by correspondence dated January 4, 2013.

11. On January 4, 2013, Mr. Huett notified Respondents that a Complaint had been received and requested that they provide copies of the documents applicable to services performed by them in the State of Alabama by January 21, 2013.

12. Following an investigation of the Complaint, Mr. Huett stated that the Board's Investigative Committee established that there was probable cause to proceed to a hearing on the Complaint; the Board's Charges were issued to Respondents on May 21, 2013.

13. Mr. Herbert stated that, as part of his investigation, he assimilated documents from Respondents' website pertaining to the company's location, including the curriculum vitae of Mr. Rogers, with the name "Rogers Construction Engineering, "advertising "forensic engineering services."

14. In response to the Board's January 4, 2013 request for a response to the Complaint, Respondent Rogers provided his entire file in this matter and stated in correspondence dated February 7, 2013, that he did not provide engineering services or any "plans, details or specifications" as part of the construction consulting he provided to The Hartford in August 2012 regarding the home at 32 The Downs in Tuscaloosa. Respondent stated that he is hired to "examine a property, analyze the construction estimates and offer an opinion as to the validity of the claim in regards to the scope of work and the associated costs." In this case, Respondent stated that he met the homeowner at the property, investigated the issues related to the restoration, construction and finish work on the home and offered his opinion "as an experienced homebuilder and commercial contractor."

15. Respondent stated that he is licensed in North Carolina, South Carolina and Georgia, but that the name of his company was devised to indicate that he performs construction consulting, not engineering services. He explained that the stamp on the bottom of his letter was mistakenly left over from a previous report in South Carolina and was not meant to indicate any intent to offer or provide engineering services in Alabama. Respondent

included with his letter a copy of his report, invoice, contractors' estimates, the insurance company's estimate and a home inspector's report.

16. On February 12, 2013, Mr. Herbert conducted a telephone interview with Respondent, who reiterated the facts included in his February 7, 2013 correspondence and appeared to be very well aware of what a professional engineer is supposed to do.

17. Mr. Herbert then referred the documents generated by Respondents to Mr. Richard Stanley Gottlieb, who served as a Technical Advisor to the Board in this matter, to request a review "to determine if [the] individual and the firm are offering services in the State of Alabama that are within the practice of engineering."

18. Mr. Gottlieb testified that he has been a licensed professional engineer since 1987, and primarily practices structural engineering. On March 13, 2013, the Board forwarded "sanitized" documents from the investigative file to Mr. Gottlieb for his review, from which any information that would identify them as being linked to Respondents had been removed. In serving as a Technical Advisor, Mr. Gottlieb testified that he was looking at the documents specifically to make a determination of whether or not Respondents had practiced engineering.

19. On March 18, 2013, Mr. Gottlieb sent a letter to the Board opining that "the author of the letter and associated report was operating under the assumption of providing engineering services in their review. Although no actual design work was performed, the author implied his opinions were the result of engineering analyses and describes examination of structural issues implying engineering practice was involved in rendering the opinions listed....Clearly the recipient of the report was relying on an engineering opinion as to the condition. The report is stamped with a South Carolina Stamp further implying the performance of engineering services."

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. 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).

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 for engaging in the practice or offer to practice engineering in Alabama without having first obtained a license from the Board. Ala. Code § 34-11-16(a)(1) (1975 as amended).

4. The record supports a finding that Respondents had sufficient notice of the place, date and time of the hearing held in this matter and of the charges against them, as evidenced by service via Certified Mail of the Notice and Board's Charges dated May 21, 2013, to Respondents' address at 2910 Monroe Street, Columbia, South Carolina.

5. Although Respondent categorically denied acting as an engineer with regard to his evaluation of the reconstruction work being provided to the home at 32 The Downs in Tuscaloosa, Alabama, his travel to Alabama, preparation of his report to The Hartford and the placement of his South Carolina professional engineers stamp on his report indicates certification of his results for that home as a professional engineer and thus constitutes the practice of engineering in this state.

6. Rogers Construction does not employ an Alabama licensed professional engineer and has not obtained a Certificate of Authorization for engineering issued by the Board. Neither is Mr. Rogers a licensed professional engineer with this Board. Accordingly, in the absence of said licensure, the undersigned finds that Respondents' actions as described

hereinabove were in violation of Ala. Code §§ 34-11-15(a) and -16(a)(1) (1975 as amended).

CONCLUSION AND RECOMMENDATION

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

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

3. Accordingly, it is hereby recommended that Respondents be ordered to cease and desist any and all acts constituting the practice of or offer to practice engineering in the State of Alabama and that the Respondents 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) (2012).

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 shall immediately **cease and desist** any and all acts constituting the practice of or offer to practice engineering in the State of Alabama.
2. Respondent shall submit to the Board a civil penalty of \$2,500.00 (two thousand five hundred dollars) made payable to the General Fund of the State of Alabama within thirty (30) days of the date of the Final Order.

3. Respondent shall pay to the Board \$1,051.32 (one thousand fifty-one dollars and thirty two cents) for cost of hearing within thirty (30) days of date of Final Order.

ENTERED this the 9th day of October, 2013

Phillip E. Santora
Phillip E. Santora

Marc S. Barter
Marc S. Barter

W. Gerald Wilbanks
W. Gerald Wilbanks

Daniel S. Turner
Daniel S. Turner

Earl R. Foust
Earl R. Foust

DID NOT ATTEND
Charles P. Willis
Charles P. Willis

RECUSED
Frazier Christy
Frazier Christy