

**FEB 18 2015**

Clerk: *Loshia Fealey*

**STATE OF FLORIDA  
BOARD OF PROFESSIONAL ENGINEERS**

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>2/18/2015</b>
File #	<b>2015-01489</b>

FLORIDA BOARD OF  
PROFESSIONAL ENGINEERS,

Petitioner,

v.

CASE NO.: 2013021397  
LICENSE NO.: PE ~~11553~~ 43607

HAROLD BERGSTEN,

Respondent.

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**FINAL ORDER**

THIS CAUSE came before the Florida Board of Professional Engineers (hereinafter "the Board") pursuant to Sections 120.569 and 120.57(2), Florida Statutes, at a duly noticed public meeting on February 12, 2015, in Daytona Beach, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause. At the hearing, Petitioner was represented by John J. Rimes, III, Prosecuting Attorney. Respondent was present.

**FINDINGS OF FACT.**

The facts set forth in the Administrative Complaint are hereby adopted and incorporated by reference as the Board's findings of facts.

**CONCLUSIONS OF LAW**

The Board found that the admitted facts constitute the violations set forth in the Administrative Complaint.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent shall pay costs in the amount of \$1,643.00 within 30 days of

this Final Order to the Florida Board of Professional Engineers.

2. Respondent's license shall then be placed on probation for a period of two (2) years from the date of filing of this Final Order. The terms of probation are:

a. Respondent shall provide a detailed list of completed projects (sign, sealed, and dated) at the six (6) month and eighteen (18) month intervals of the term of probation.

b. A FEMC Consultant will pick two (2) projects from each submitted list for review. Respondent is responsible for the Consultant's fee for reviewing the projects. If the Consultant provides an unfavorable review of a project, the review will go to the Probable Cause Panel for a determination of whether additional disciplinary proceedings shall be initiated. If the first review is favorable, and upon recommendation of the Consultant, the Respondent may petition the Board for early termination of his probation, as long as the other requirements of probation are met.

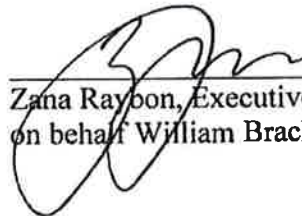
c. Respondent shall complete the Study Guide prepared by the Board of Professional Engineers regarding Chapter 471, Florida Statutes, and Rules of the Florida Board of Professional Engineers. The Respondent shall provide a personal email address that will be used to access the on-line study guide.

d. Respondent shall complete a Board approved course in Engineering Professionalism and Ethics within one (1) year of the date of this Final Order. Respondent shall submit a Certificate of Completion of the course prior to such date.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 17<sup>th</sup> day of February, 2015

**FLORIDA BOARD OF PROFESSIONAL ENGINEERS**

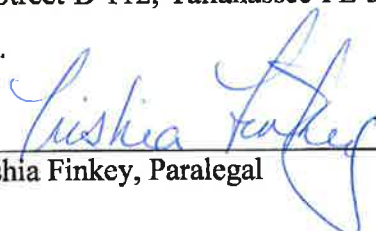
  
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Zana Raybon, Executive Director  
on behalf William Bracken, P.E. Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE FLORIDA APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing filed Final Order has been provided by U.S. Mail to Respondent, Harold F. Bergsten, Jr., P.E., at **14363 Wing foot Road, Orlando, FL 32826**; and by interoffice mail to Michael T. Flury Assistant Attorney General, PL-01 The Capitol, Tallahassee FL 32399-1050 and John Rimes, Prosecuting Attorney, 2639 N. Monroe Street B-112, Tallahassee FL 32303, this 19<sup>th</sup> day of February, 2015.

  
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Trishia Finkey, Paralegal



license number PE 43670. Respondent's last known address is 14363 Wing Foot Road, Orlando, Florida 32826.

3. In 2012, Mark Miller, P. E., the structural engineer of record as that term is defined in Rule 61G15-31.001(1), Florida Administrative Code, for the Mount Dora Middle School Addition ("Mount Dora Project") delegated the design of the steel stair and handrails for the Mount Dora Project to Respondent, who would act as the delegated engineer for the steel stair and handrail design as provided in Rule 61G15-30.002(2) and (5), Rule 61G15-30.005, Rule 61G15-30.006, Rule 61G15-31.001, Florida Administrative Code. The structural engineering drawings produced by the Engineer of Record ("EOR"), Mark Miller, P. E., clearly indicate the design loads to be used by Respondent as the delegated engineer. The drawings also indicate the submission requirements for the Respondent's calculations and design drawings.

4. Respondent produced several sets of signed and sealed documents for the design of the steel stair and handrails that were provided to the EOR. The submittals of the delegated engineering drawings and calculations were rejected numerous times by the EOR for various deficiencies as set out below:

A. Submittal #46 included drawings signed and sealed by Respondent on 9-19-12. The Submittal did not include the required calculations or design loads and were missing many details. Specifically, the Submittal drawings were submitted without the calculations as required in the structural notes of the EOR.

B. Submittal #47 included drawings signed and sealed by Respondent on 11-19-12 and calculations signed and sealed on 11-17-12. The calculations did not include the correct design loads, included math errors and incorrect designs, and were missing the design of numerous members. The drawings did not include the design loads and were

missing many details. Specifically, there is a mathematical error in the calculations on Sheet 2, and, as a result, all design conclusions related to the erroneous calculations are incorrect. Additionally, on Sheet 3, the incorrect live load for the railing design was used, which was half of the required load. Finally, the connections shown on Sheet E-2 do not have calculations provided as required.

C. Submittals #48 and #49 included revised calculations and revised drawings signed and sealed by Respondent on 12-3-12. Some of the errors in the calculations were corrected but the new added calculations were incomplete and incorrect. In Submittal #48, the connections shown on Sheet E-3 do not match the accompanying calculations. Specifically, the calculation for weld size on Sheet 9 in Submittal #49 neglected to take into account overturning and tension loads.

D. Submittals #53 and #54 included revised calculations signed and sealed on 12-21-12 and revised drawings signed and sealed by Respondent on 12-3-12. The revised drawings appear to be the same signed and sealed drawings from Submittal #48 with the revisions added to the same plans after the signature and seal was applied on 12-3-12.

E. Submittals #59 and #60 included revised calculations and revised drawings signed and sealed by Respondent on 1-29-13. Many of the previously noted deficiencies were corrected in this submittal; however, some of the new calculations and drawings contained errors and discrepancies. Specifically, in Submittal #59, the footing sizes designed on Sheet E-5 are too shallow and do not meet the minimum thickness requirements of ACI 318. In Submittal #60 the calculation on Sheet 12 is based upon an

old Concrete Reinforcing Steel Institute handbook (1952) instead of the current ACI 318 requirements.

5. Section 471.033(1)(g), Florida Statutes, provides that an engineer is subject to discipline for engaging in negligence in the practice of engineering. Rule 61G15-19.001(4), Florida Administrative Code, provides that negligence constitutes "failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles."

6. Respondent's engineering drawings for the Mount Dora Project contain deficiencies including; but not limited to, those set forth in Paragraphs Two (2) through Four (4). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), Florida Administrative Code, by sealing and signing structural engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the engineering documents for the Mount Dora Project, and (2) the engineering documents for the Mount Dora Project were not issued in compliance with acceptable engineering principles.

7. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), Florida Administrative Code, by being negligent in the practice of engineering.

WHEREFORE, the Petitioner respectfully requests the Florida Board of Professional Engineers to enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license; restriction of the Respondent's practice; imposition of an administrative fine; issuance of a reprimand; placement of the Respondent on

probation; the assessment of costs related to the investigation and prosecution of this case, other than costs associated with an attorney's time, as provided for in Section 455.227(3), Florida Statutes; and/or any other relief that the Board deems appropriate.

SIGNED this 27<sup>th</sup> day of September, 2014.

Zana Raybon  
Executive Director

  
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BY: John J. Rimes, III  
Prosecuting Attorney

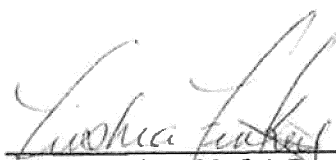
COUNSEL FOR FEMC:

John J. Rimes, III  
Florida Engineers Management Corporation  
2639 North Monroe Street, Suite B-112  
Tallahassee, Florida 32303  
Florida Bar No. 212008

PCP Members: RODDENBERRY, MATTHEWS & PEPPER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the filed *Administrative Complaint* has been furnished to HAROLD F. BERGSTEN, Jr., P.E., at 14363 Wing Foot Road, Orlando, Florida 32826, by U.S. Certified Mail, on the 2nd of October, 2014.

  
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Trishia Finkey, NALA Paralegal  
Final Order Compliance Coordinator