

FILED
Florida Engineers
Management Corporation
2/9/2017 Clerk: Rebecca Valentine

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date 2/9/2017
File # 2017-01063

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No: 2015036055

EDGAR DUENAS, P.E.,

Respondent,

_____ /

FINAL ORDER ADOPTING SETTLEMENT STIPULATION

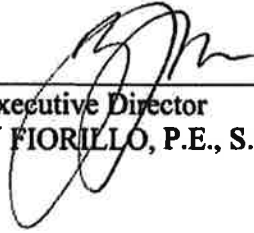
THIS CAUSE came before the FLORIDA BOARD OF PROFESSIONAL ENGINEERS (“Board”), pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on February 2, 2017 in Orlando, Florida, for the purpose of considering a Settlement Stipulation (attached hereto as “Exhibit A to Final Order”) entered into between the parties in this cause. Upon consideration of the stipulation, the documents submitted in support thereof, and the arguments of the parties, it is hereby:

ORDERED AND ADJUDGED that the Settlement Stipulation as submitted be and is hereby adopted *in toto* and incorporated herein by reference. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the stipulation.

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

DONE AND ORDERED this 8 day of February, 2017.

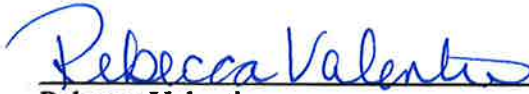
FLORIDA BOARD OF PROFESSIONAL ENGINEERS



Zana Raybon, Executive Director
For ANTHONY FIORILLO, P.E., S.I., CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing filed *Final Order Adopting Settlement Stipulation* has been furnished by U.S. First Class Mail to Edgar Duenas, P.E. by service upon his attorney of record: Charles B. Hemicz, Esquire, Hemicz Legal Services At 15854 Bent Creek Road, Wellington, Florida 33414 (his address of record with the Department of Business and Professional Regulation) this 10 day of February, 2017.



Rebecca Valentine,
Paralegal

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

RECEIVED

OCT 25 2016

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

FLORIDA BOARD OF
PROFESSIONAL ENGINEERS

Petitioner,

v.
EDGAR DUENAS, P.E.,

FEMC Case No. 2015036055

Respondent,
_____ /

SETTLEMENT STIPULATION

EDGAR DUENAS, P.E. ("Respondent") and the Florida Engineers Management Corporation ("FEMC") hereby stipulate and agree to the following Joint Settlement Stipulation ("Stipulation") and to entry of a Final Order of the Florida Board of Professional Engineers ("Board"), incorporating this Stipulation in the above-styled matter.

STIPULATED FACTS

1. For all times pertinent hereto, Respondent, EDGAR DUENAS, P.E., was a licensed engineer in the State of Florida, having been issued license number PE 57381
2. Respondent was charged with violations of Chapter 471, Florida Statutes, in an Administrative Complaint filed by the Florida Engineers Management Corporation, and properly served upon Respondent. True and correct copies of the filed Administrative Complaints are attached hereto and incorporated herein by reference as "Composite Exhibit A to Settlement Stipulation".

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in Respondent's capacities as a licensed professional engineer admits that, in such capacity, Respondent is subject to the provisions of Chapter 471, Florida Statutes, and the jurisdiction of the Department of Business and Professional Regulation ("Agency" or "Department"), FEMC, and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, constitute violations of Chapter 471, Florida Statutes, as alleged in the Complaint.

STIPULATED DISPOSITION OF LAW

1. Respondent shall, in the future, comply with Chapters 471 and 455, Florida Statutes, and the rules promulgated pursuant thereto.

2. Should Respondent fail to comply with the terms of the Final Order, an administrative complaint for failure to comply with final order will automatically be opened against Respondent.

3. Respondent shall pay an **ADMINISTRATIVE FINE** of \$1,000.00 and **COSTS** of \$1,227.75 to the Board within thirty (30) days of the date that the Final Order adopting this Stipulation is filed with the Agency Clerk.

4. Respondent's license to practice engineering shall be **REPRIMANDED**.

5. Respondent shall be placed on **PROBATION** for two (2) years from the date the Final Order adopting this Stipulation is filed with the Agency Clerk, with the following terms:

a. Respondent shall successfully complete a Board-approved course in **BASIC ENGINEERING PROFESSIONALISM AND ETHICS** within one (1) year of the date the Final Order adopting this Stipulation is filed with the Agency Clerk. Prior to that date, Respondent shall submit to the Board a Certificate of Completion of the course.

It is the Respondent's responsibility to notify the Board that he has completed the course in a timely manner. Respondent may contact the Florida Engineering Society ("FES"), 125 South Gadsden St., Tallahassee, FL 32301, (850)224-7121, for information regarding the availability of such courses in Florida; however, if the FES provides any information regarding such a course to the Respondent, the Respondent must submit that course information to the FEMC for review and determination as to whether or not it will comply with the Board's requirements. Respondent may also elect to complete one of the following correspondence courses offered by:

Murdough Center for Engineering Professionalism
Texas Tech University, PO Box 41023, Lubbock, Texas 79409
Engineering Ethics Basic
Engineering Ethics Intermediate
Engineering Ethics Advanced
Telephone 806-742-3525; Fax 806-742-0444; E-mail: engineering.ethics@ttu.edu

EPD Program
Auburn University
Engineering Extension Service
217 Ramsay Hall, Auburn, Alabama 36849-5331
Ethics and Professionalism
Phone 800-446-0382 or 334-844-4370

An Accredited College or University course if that course information is first submitted to the FEMC for review and determination as to whether or not it will comply with the Board's requirements.

Courses offered by Continuing Education Programs or Professional Business Programs (Exp: SunCam, Inc., C2Ed), are not Board Certified, and will not meet the requirements.

b. Respondent shall successfully complete the **STUDY GUIDE** which has been prepared by the Board and which will be furnished to Respondent, regarding the Engineering Practice Act, Chapter 471, Florida Statutes, and the Rules of the Board. Respondent is required to provide a personal email address that will be used to access the

on-line study guide. The study guide must be completed within thirty (30) days of the date on which the Final Order incorporating this Stipulation is filed with the Agency Clerk.

6. Respondent shall APPEAR before the Board when this Stipulation is presented. Respondent must be prepared to discuss: how this situation occurred, what improvements and quality control measures Respondent plans to implement to improve Respondent's work product, and how Respondent intends to prevent this circumstance from occurring in the future.

7. Respondent acknowledges that neither Respondent's attendance at the Board Meeting when this Stipulation is presented, nor any continuing education or college level courses taken as a requirement of the terms of this Stipulation may be used to comply with the continuing education requirements of Chapter 61G15-22, Florida Administrative Code.

8. It is expressly understood that this Stipulation is subject to approval of the Board and FEMC and has no force or effect until the Board issues a Final Order adopting this Stipulation.


9. This Stipulation is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to, or in conjunction with, consideration of this Stipulation. Furthermore, should this Stipulation not be accepted by the Board, it is agreed that presentation to and by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration, or resolution of these proceedings.

10. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or otherwise challenge or contest the validity of the joint

Stipulated Facts, Conclusions of Law, imposition of discipline, and the Final Order of the Board incorporating this Stipulation.

11. Respondent waives the right to seek any attorney's fees or costs from the Board in connection with this disciplinary proceeding.

WHEREFORE, the parties hereto request the Board to enter a Final Order accepting and implementing the terms contained herein.

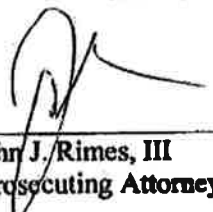


Edgar Duenas, P.E.,
Respondent
Case No. 2015036055

Dated: 12/14/16

APPROVED this 3rd day of November, 2016.

Zana Raybon, Executive Director
Florida Board of Professional Engineers



BY: John J. Rimes, III
Chief Prosecuting Attorney

FILED
Florida Engineers
Management Corporation
9/23/2016 Clerk: Rebecca Valentine

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK: Evette Lawson-Proctor
Date: 9/23/2016
File #

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

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ADMINISTRATIVE COMPLAINT

COMES NOW the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner, Florida Board of Professional Engineers, hereinafter referred to as "Petitioner," and files this Administrative Complaint against EDGAR DUENAS, P.E., hereinafter referred to as "Respondent." This Administrative Complaint is issued pursuant to Sections 120.60 and 471.038, Florida Statutes. Any proceeding concerning this complaint shall be conducted pursuant to Section 120.57, Florida Statutes. In support of this complaint, Petitioner alleges the following:

1. Petitioner, Florida Board of Professional Engineers, is charged with regulating the practice of engineering pursuant to Chapter 455, Florida Statutes. This complaint is filed by the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner. FEMC is charged with providing administrative, investigative, and prosecutorial services to the Florida Board of Professional Engineers pursuant to Section 471.038, Florida Statutes (1997).

2. Respondent is, and has been at all times material hereto, a licensed professional engineer in the State of Florida, having been issued license number PE 57381. Respondent's last known address is 120 North Federal Highway, Suite 305, Lake Worth, Florida 33460.

3. In 2006 Respondent created plans and specifications for a window replacement project at the Seagrape Tower Condominium located at 5460 North Ocean Drive, Riviera Beach, FL 33404 (Windows Replacement Project). Subsequent thereto a contractor was selected and the work was performed and completed.

4. During the replacement of the old windows and the installation of the new windows and sliding glass doors, Respondent provided supervising and inspection services during installation of the new windows and sliding glass doors. Respondent also provided the inspection services on behalf of the City of Riviera Beach Building Department.

5. On November 16, 2007 Respondent signed and sealed a letter (Letter) to the Building Official for the City of Riviera Beach stating in material part that the "...scope of work [of the Windows Replacement Project] was completed in substantial conformance to the permitted plans and specifications." The Letter stated that inspections were performed during the time frame of the Windows Replacement Project to observe the work in progress and to assure the above stated conformity with the plans and specifications.

6. Subsequent to the issuance of the Letter in 2013 the governing body of the Seagrape Tower Condominium hired another engineering firm to design repairs for the concrete balconies at the Condominium. During the repairs significant deficiencies were found in the windows and sliding glass doors which had been installed during the Windows Replacement Project in 2006-2007.

- 7. The significant deficiencies that were found in the completed Windows Replacement Project included the following:**
- A. Anchors were not fully engaged and seated in the frames which is in violation of the manufacturer's installation requirements and the design drawing requirements.**
 - B. Non-stainless steel anchors were installed contrary to the design specifications**
 - C. There was no sealant installed at some of the anchors which is in violation of the manufacturer's installation requirements and the design drawing requirements.**
 - D. Surfaces were not properly prepared prior to installing the sealants in violation of the manufacturer's requirements and the design drawing requirements.**
 - E. Excessive numbers of shims were installed beyond the manufacturer's requirements.**
 - F. Non-approved spray foam and caulk was installed which was not in conformance with the design drawings.**
 - G. The wood bucks were improperly installed in violation of the design drawings.**
 - H. Wood bucks were installed that did not meet the requirements of the Notice of Acceptance nor the Florida Building Code.**

8. The deficiencies listed in Paragraph 7 are material and serious and would have been obvious had Respondent's inspections of the construction during the Windows Replacement Project been performed in compliance with accepted engineering standards and in accordance with applicable engineering principles. Notwithstanding the deficiencies, however, Respondent certified that the Windows Replacement Project "was completed in substantial conformance to the permitted plans and specifications" when the Windows Replacement Project as constructed was, in fact, materially not in compliance with Respondent's plans and

specifications for the Windows Replacement Project and with accepted applicable engineering standards for this type of project.

9. Respondent's November 16, 2007 Letter is an engineering "certification" as that term is defined in Rule 61G15-18.011(4), Florida Administrative Code, ("a statement signed and/or sealed by a professional engineer representing that the engineering services addressed therein, as defined in Section 471.005(6), F.S., have been performed by the professional engineer, and based upon the professional engineer's knowledge, information and belief, and in accordance with commonly accepted procedures consistent with applicable standards of practice...").

10. 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), Fla. Admin 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."

11. By signing and sealing the November 16, 2007 Letter without adequately inspecting the construction during the Windows Replacement Project for the reasons set out in Paragraphs Seven (7) and Eight (8), Respondent failed to utilize due care in performing in an engineering capacity and failed to have due regard for acceptable standards of engineering principles.

12. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by engaging in negligence in the practice of engineering.

WHEREFORE, the Petitioner respectfully requests the 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 23 day of September, 2016.

Zana Raybon
Executive Director


BY: John J. Rimes, III
Prosecuting Attorney

COUNSEL FOR FEMC:

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

JR/rv

PCP DATE: September 13, 2016

PCP Members: FLEMING, BRACKEN & MATTHEWS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Edgar Duenas, P.E. at 120 North Federal Highway, Suite 305, Lake Worth, Florida 33460, by certified mail and First Class U. S. Mail, on the 23 of Sept 2016.


Rebecca Valentine, Paralegal