

FILED
Florida Engineers
Management Corporation
8/18/2017 Clerk: Rebecca Valentine

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date 8/18/2017
File # 2017-06630

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2015045726, 2016026528

FERMIN A. MARTINEZ, 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 August 10, 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 18 day of August, 2017.

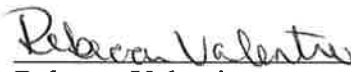
FLORIDA BOARD OF PROFESSIONAL ENGINEERS



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 Fermin Martinez, P.E., by service upon his attorney of record: Cristina Villar, Esq., Quintairos, Prieto, Wood & Boyer, P.A., 9300 South Dadeland Boulevard, 4TH Floor, Miami, Florida 33156 this 21 day of August, 2017.



Rebecca Valentine,
Paralegal

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2015045726, 2016026528

FERMIN A. MARTINEZ, P.E.,

Respondent,

SETTLEMENT STIPULATION

FERMIN A. MARTINEZ, 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, FERMIN A. MARTINEZ, P.E., was a licensed engineer in the State of Florida, having been issued license number PE 19363.
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 \$2,000.00 (\$1,000.00 for each Count in the Administrative Complaint) and COSTS of \$4,712.25 to the Board one (1) year of the date that the Final Order adopting this Stipulation is filed with the Agency Clerk. The payments shall be made in quarterly payments. The first payment of \$1678.25 will be due 90 days following the date that the Final Order adopting this Stipulation is filed with the Agency Clerk and the remaining quarterly payments of \$1,678.00 thereafter until the full amount is paid..

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

5. 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.

6. 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.

c. Respondent shall submit to the Board a detailed list of all completed projects (signed, sealed, and dated), by the Respondent for PROJECT REVIEW at six (6) and eighteen (18) month intervals from the date the Final Order adopting this Stipulation is filed with the Agency Clerk. The projects shall include: all projects and reports signed and sealed by Respondent.

d. A FEMC Consultant will select two (2) projects from each submitted list for review. Respondent is responsible for promptly furnishing any set of completed plans (signed, sealed, and dated), calculations, and any other supporting documentation requested by the Consultants. The Respondent must sign, date, and seal all materials that are submitted for project review using a non-embossed, seal. Sealed project review materials may be copied and submitted electronically, if desired by the Respondent. Respondent is also responsible for the Consultant's fees for reviewing the projects, and shall remit payment in the amount of \$2,000.00 by check or money order made payable in the name of the Board's Consultant at the time that the project lists are submitted to FEMC. In the event that the project review cost exceeds \$2,000.00, then the Respondent is responsible for the deficiency. In the event that the cost of the reviews is less than \$2,000.00, then the unused portion will be refunded to Respondent. Should the Consultant return an unfavorable report

concerning Respondent's projects, that report shall be submitted to the Probable Cause Panel for determination of whether additional disciplinary proceedings should be initiated.

e. If the Respondent has not performed engineering services on a sufficient number of projects to make the submissions required by Sc., above, the initial or, if applicable, the subsequent submission required by the terms of probation shall be extended for a period of six (6) months to allow Respondent to perform the services necessary for the required review. **However, if, after the extension has expired, Respondent does not perform sufficient engineering services to meet the requirements of the terms of probation, Respondent's license will be placed on voluntary inactive status as defined in Section 455.227, Florida Statutes, by the Board, without any further necessity for action on the part of Respondent.** Respondent's license shall remain on such status, provided Respondent meets the requirements of Section 455.227, unless and until Respondent notifies the Board that he wishes to recommence practice and obtains Board authorization to reactivate his license under such terms of probation that the Board deems appropriate at that time.

f. Should the FEMC Consultant return a favorable report after reviewing the plans submitted during the first year of probation, the requirements for the second year of probation may be waived and the probation may be terminated. A "favorable report" is herein defined as a report that, in the sole opinion of the Consultant with the concurrence of the Board, finds that the plans reviewed were considered to be free of any material deficiencies.

g. Should the Respondent fail to timely comply with the terms of the Final Order with regard to the Project Reviews discussed herein, this case will be submitted to the

Probable Cause Panel for review and determination of whether additional disciplinary action should be taken.

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.

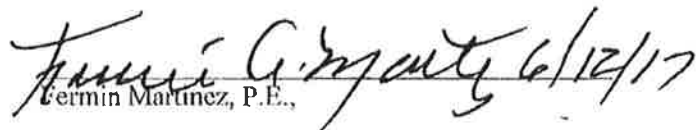
8. It is expressly understood that this Stipulation is subject to approval of the Board and FEMC and has no force or effect until the Board issues a Final Order adopting this Stipulation.

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.

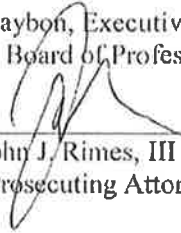

Fermin Martinez, P.E.,

Respondent
Case No. 2015045726 & 2016026528

Dated: 11/20/2017

APPROVED this 12 day of July, 2017.

Zana Raybon, Executive Director
Florida Board of Professional Engineers


BY: John J. Rimes, III
Chief Prosecuting Attorney

FILED
Florida Engineers
Management Corporation
3/24/2017 Clerk: Rebecca Valentine

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK **Eveke Lawson-Practor**
Date **3/24/2017**
File #

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2015045726, 2016026528

FERMIN A. MARTINEZ, P.E.,

Respondent,

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 FERMIN A. MARTINEZ, 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:

FACTS COMMON TO FEMC CASE NUMBERS 2015045726 &, 2016026528

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 19363. Respondent's last known address is 8340 SW 65th Avenue #3, Miami, Florida 33143.

3. The Board has adopted Responsibility Rules of Professional Engineers ("Responsibility Rules"). These Rules are contained in Chapters 61G15-30 to 61G15-36, Fla. Admin. Code. Professional Engineers who perform services covered by the Responsibility Rules are required to comply with the Rules.

4. 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."

5. Rule 61G15-19.001(4), Fla. Admin. Code, also provides that "[f]ailure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer."

6. Rule 61G15-30.002(1), Fla. Admin. Code, mandates that Respondent, as the engineer of record for all engineering work delineated in the Specific Allegations, is professionally responsible for the documents prepared. As such, Respondent is responsible for producing documents that comply with the applicable portions of the Responsibility Rules.

7. Respondent acted as the Structural Engineer of Record for a residential remodeling project located 6467 SW 14th St. West Miami, Florida (Cuarezma Project) and for a storage

building located at 15382 SW 177 Terrace, Miami, Fl (Montero Project) as that term is defined in Rules 61G15-30.002(1) and 61G15-31.002(1), Fla. Admin. Code. As such, all engineering documents prepared, signed, sealed and dated by Respondent must contain the information set out in Rule 61G15-30.003(1) and Rule 61G15-31.002(5):

When prepared for inclusion with an application for a general building permit, the Documents shall meet all Engineer's Responsibility Rules, set forth in Chapters 61G15-31, ..., F.A.C., and be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the Florida Building Code[FBC], adopted in Section 553.73, F.S., and applicable laws, ordinances, rules and regulations, as determined by the Agency Having Jurisdiction (AHJ). The Documents shall include:

(a) Information that provides material specifications required for the safe operation of the system that is a result of engineering calculations, knowledge and experience.

(b) List Federal, State, Municipal, and County standards, codes, ordinances, laws, and rules, with their effective dates, that the Engineering Documents are intended to conform to.

(c) Information, as determined by the Engineer of Record, needed for the safe and efficient operation of the system.

(d) List engineering design criteria; reference project specific studies, reports, and delegated Engineering Documents.

(e) Identify clearly elements of the design that vary from the governing standards and depict/identify the alternate method used to ensure compliance with the stated purpose of these Responsibility Rules.

8. The documents must also include all of the information required by Rule 61G15-31.002(5):

(5) Structural Engineering Documents. The structural drawings, specifications and other documents setting forth the overall design and requirements for the construction, alteration, repair, removal, demolition, arrangement and/or use of the structure, prepared by and signed and sealed by the engineer of record for the structure. Structural engineering documents shall identify the project and specify design criteria both for the overall structure and for structural components and structural systems. The drawings shall identify the nature, magnitude and location of all design loads to be imposed on the structure. The structural engineering documents shall provide construction requirements to indicate the nature and character of the work and to describe, detail, label and define the structure's components, systems, materials, assemblies, and equipment.

9. The Florida Building Code (2010) – Building (FBC-B) Section 107.2.1 “Information on construction documents” states: “Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations,…”

FEMC CASE # 2015045726

10. Respondent’s Structural Engineering Design Documents (Sheets A-1 through A-4 and S-1 through S-5), which were sealed, signed and dated on February 25, 2015, for the Cuarezma Project are materially deficient as follows:

A. On drawing S-3 the wind loads for the monoslope roof are indicated but there are no wind loads shown for the gable roof areas which is a violation of FBC Section 1603.1 which states in part; [t]he design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.9 shall be indicated on the construction documents.

B. There is no indication of structural framing for the new stair at the rear entrance which is a violation of the FBC Section 1603.1 which states in part; [c]onstruction documents shall show the size, section and relative location of structural members.

C. The wind loads shown on S-3 are lower than the wind loads indicated in the calculations which is a violation of FBC Section 1603.1 which states in part; [t]he design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.9 shall be indicated on the construction documents.

D. General Note #4 on A-2 specifies 2,500 psi concrete for foundations and the slab-on-grade. Note 2 on S-3 specifies 3,000 psi concrete for all concrete. This conflict is a violation of FBC Section 107.2.1 which states in part; [c]onstruction documents shall be of sufficient clarity to indicate the location, nature and extent of work proposed.

E. The west elevation on A-3 indicates a window in the playroom that is not shown on the Floor Plan on A-1 which is a violation of FBC Section 107.2.1 which states in part; c] [c]onstruction documents shall be of sufficient clarity to indicate the location, nature and extent of work proposed.

F. The Typical Wall Section on A-4 specifies 19/32" CDX plywood sheathing with 8d nails @ 6" O.C. at panel edge and intermediate supports and @ 4" O.C. at gable end trusses. Note 9 on S-1 specifies 5/8" exterior grade structural plywood nailed to trusses with 8d ring shank nails at the spacing shown on the plan (no spacing was shown on the plans). Note 4 on S-3 states Plywood sheathing shall be CDX of 5/8" min. thickness and shall be nailed to supports with 10d ring shank nails spaced at 6" O/C at panel edges and center. In the Typical Wall Section 1 on S-4 the note states 5/8" plywood nailed w/ 10d ring shank nails at 4" O/C. The Plywood Sheathing Detail on S-5 states plywood sheathing shall be CDX of 5/8" min. thickness

and shall be nailed to supports with 10d ring shank nails spaced at 4" O/C. These conflicting requirements are a violation of FBC Section 107.2.1 which states in part; [c]onstruction documents shall be of sufficient clarity to indicate the location, nature and extent of work proposed.

G. The foundation and ground floor plans on S-2 are missing numerous dimensions which is a violation of the FBC Section 1603.1 which states in part; [c]onstruction documents shall show the size, section and relative location of structural members and FBC Section 107.2.1 which states in part; Construction documents shall be of sufficient clarity to indicate the location, nature and extent of work proposed.

H. The Typical Wall Section 2 on S-4 indicates a 2x6 ledger with 5/8" expansion bolts at 12" O/C and Detail 13 on S-5 indicates a double 2x6 ledger with 3 expansion bolts at 12" O/C. These conflicting requirements are a violation of FBC Section 107.2.1 which states in part; [c]onstruction documents shall be of sufficient clarity to indicate the location, nature and extent of work proposed.

FEMC CASE 2016026528

11. Respondent's Structural Engineering Design Documents (Sheets A1 and S1), which were sealed, signed and dated on March 11, 2016, for the Montero Project are materially deficient as follows:

A. There are no roof live loads or wind loads shown on the drawings which is a violation of FBC Section 1603.1 which states in part; "[t]he design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.9 shall be indicated on the construction documents. This omission constitutes a violation of Rule 61G15-31.002 (5).

B. On drawing S-1 the “Typical Wall Sections” indicate a low sloped roof structure, however the “Roof Framing Plan” indicates a gable sloped roof structure. This conflict is a violation of FBC Section 107.2.1 which states in part; Construction documents shall be of sufficient clarity to indicate the location, nature and extent of work proposed. This constitutes a violation of Rule 61G15-30.003 (1).

C. There are no structural notes indicating applicable code or strength of materials for concrete, masonry, reinforcing steel and wood as required in FBC Section.107.3.5, Minimum plan review criteria for buildings. This omission constitutes a violation of Rule 61G15-30.003(1) (a).

D. The 2x6 roof framing does not provide adequate structural strength to resist the roof loads required in Chapter 16 FBC and is thus in violation of Chapter 16 FBC. This constitutes a violation of Rule 61G15-30.003 (1).

COUNT I

Curezma Project (FEMC CASE #2015045726)

12. Petitioner realleges and incorporates Paragraphs One (1) through Ten(10) as if fully set forth in this Count One.

13. Respondent’s structural engineering drawings for the Curezma Project contain deficiencies including; but not limited to, those set forth in Paragraph Ten (10). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., 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 final engineering documents

for the Curezma Project and (2) the final engineering documents for the Curezma Project were not issued in compliance with acceptable engineering principles.

14. 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 being negligent in the practice of engineering.

COUNT II

Montero Project (FEMC CASE #2015045726)

15. Petitioner realleges and incorporates Paragraphs One (1) through Nine (9) and Eleven (11) as if fully set forth in this Count Two.

16. Respondent's structural engineering drawings for the Montero Project contain deficiencies including; but not limited to, those set forth in Paragraph Eleven (11). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., 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 final engineering documents for the Montero Project and (2) the final engineering documents for the Montero Project were not issued in compliance with acceptable engineering principles.

17. 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 being negligent 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 24 day of March, 2017.

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: March 14, 2017
PCP Members: FLEMING, BRACKEN & MATTHEWS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Fermin Martinez, P.E. at 8340 SW 65th Avenue #3, Miami, Florida 33143, by certified mail and First Class U. S. Mail, on the 27 of March, 2017.


Rebecca Valentine, Paralegal