

FILED
Florida Engineers
Management Corporation
9/7/2018 Clerk: Rebecca Valentine

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date 9/7/2018
File # 2018-07450

STATE OF FLORIDA
FLORIDA REAL BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC CASE NOS.: 2017058901

WARD HERLACHE, P.E.

Respondent.

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 August 9, 2018, in Orlando, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by John J. Rimes, Chief Prosecuting Attorney. Respondent was present and was not represented by legal counsel. Upon consideration of the material presented and the testimony of the Respondent, and being otherwise advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The Administrative Complaint was properly served on Respondent.
2. Respondent requested a hearing not involving disputed issues of material fact pursuant to section 120.57(2), F.S.
3. The facts set forth in the Statement of Undisputed Material Facts (attached hereto as Exhibit B) are hereby adopted and incorporated by reference as the facts of this case.

CONCLUSIONS OF LAW

4. The admitted facts constitute the violations set forth in the Administrative Complaint, which are adopted and incorporated by reference as the conclusions of law in this case and for which the Board may impose discipline.

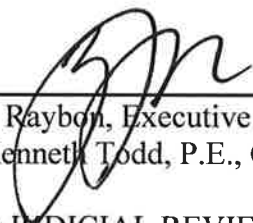
THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent shall pay COSTS in the amount of one thousand dollars (\$1,000.00) within thirty (30) days of the filing date of this Final Order.

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

DONE AND ORDERED this 10 day of September 2018.

BOARD OF PROFESSIONAL ENGINEERS



Zana Raybon, Executive Director
for Kenneth Todd, P.E., CFM, 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 Final Order has been provided by U.S. Mail to: Ward Herlache, 3801 Harrison Street, Oakland, CA 94611; by interoffice mail to: John J. Rimes, FEMC, 2639 North Monroe Street, Suite B-112, Tallahassee, Florida 32303 and Board of Professional Engineers, 2639 North Monroe Street, Suite B-112, Tallahassee, Florida 32303; and by electronic mail to: Lawrence D. Harris, Assistant Attorney General, Lawrence.Harris@myfloridalegal.com this 7 day of September, 2018.

Rebecca Valentine

FILED
Florida Engineers
Management Corporation
03/26/2018 Clerk: Rebecca Valentine

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK **Evette Lawson-Proctor**
Date **3/26/2018**
File #

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2017058901

WARD A. HERLACHE, 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 Ward A. Herlache, 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 81480. Respondent's last known address is 3801 Harrison Street, Oakland, California 94611.

3. Pursuant to Rule 61G15-22.006(2), Florida Administrative Code, "The Board will audit at random a number of licensees as is necessary to assure that the continuing education requirements are met." Pursuant to the provisions of the Rule, on July 18, 2017 FEMC requested the Department of Business & Professional Regulation (DBPR) to provide a list containing a random number of licensees who had renewed their licenses. This information was received from DBPR on July 21, 2017.

4. Respondent renewed Respondent's Professional Engineer license on January 18, 2017 and attested that Respondent had completed the required Continuing Education necessary for renewal as required by Section 471.017(3)(a), Florida Statutes, which provides in material part:

"(3)(a) The board shall require a demonstration of continuing professional competency of engineers as a condition of license renewal or relicensure. Every licensee must complete 9 continuing education hours for each year of the license renewal period, totaling 18 continuing education hours for the license renewal period. For each renewal period for such continuing education:

1. One hour must relate to this chapter and the rules adopted under this chapter.
 2. One hour must relate to professional ethics.
 3. Four hours must relate to the licensee's area of practice.
 4. The remaining hours may relate to any topic pertinent to the practice of engineering.
- Continuing education hours may be earned by presenting or attending seminars, in-house or nonclassroom courses, workshops, or professional or technical presentations made at meetings, webinars, conventions, or conferences, including those presented by vendors with specific knowledge related to the licensee's area of practice...."

5. On July 24, 2017, Respondent was provided with a Memo advising Respondent that Respondent was selected to participate in the audit process. On September 4, 2017, Respondent responded to the Audit. Upon review of the information provided by Respondent, it was clear that when Respondent renewed the PE license on January 18, 2017 Respondent lacked

the required 4 hours of Area of Practice, 12 hours of General Engineering and the Ethics Courses required for renewal as provided in Section 471.017(3), Florida Statutes.

6. In fact, Respondent did not complete all of the deficiencies in the 4 hours of Area of Practice, 12 hours of General Engineering and the Ethics Courses until October 11, 2017. In order to have been in compliance with Section 471.017 when Respondent certified that Respondent had taken and completed all required CE Courses Respondent was required to have taken and completed all required CE Courses by February 28, 2017.

7. Section 471.033(1)(a) provides in material part: “(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken: (a) Violating any ... rule of the board or department. Rule 61G15-19.001(6)(s), Florida Administrative Code, provides in material part: “(6) [a] professional engineer shall not commit misconduct in the practice of engineering. Misconduct in the practice of engineering as set forth in Section 471.033(1)(g), F.S., shall include, but not be limited to: (s) Renewing or reactivating a license without completion of Continuing Education (CE) hours and subject areas as required by Section 471.017, F.S., and Rule 61G15-22.001, F.A.C.”

8. By renewing Respondent’s PE license without having completed the required 4 hours of Area of Practice, 12 hours of General Engineering and the Ethics Course at the time that Respondent certified that all required CE Courses had been taken, Respondent violated Section 471.033(1)(a) and Rule 61G15-19.001(6)(s).

9. Based upon the foregoing Respondent is hereby charged with violating Section 471.033(1)(a) and Rule 61G15-19.001(6)(s).

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 26 day of March, 2018.

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, 2018
PCP Members: FLEMING, BRACKEN & MATTHEWS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Ward A. Herlache, P.E. at 3801 Harrison Street, Oakland, California 94611, by certified mail and First Class U. S. Mail, on the 27 of March, 2018.


Rebecca Valentine, Paralegal

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2017058901

WARD A. HERLACHE, P.E.

Respondent,
_____ /

STATEMENT OF UNDISPUTED MATERIAL FACTS

Petitioner, Florida Engineers Management Corporation ("FEMC"), on behalf of the Florida Board of Professional Engineers ("FBPE" or "Board") and Respondent, Ward A. Herlache, PE. ("Respondent"), hereby submit the following Statement of Undisputed Material Facts ("SUMF"). The undisputed material facts contained herein form the only factual basis upon which a determination of whether Respondent violated the provisions of Chapter 471, Florida Statutes, and Chapter 61G15, Florida Administrative Code (which were charged in the Administrative Complaint that was filed in this case on March 26, 2018) may be made by the Board. Notwithstanding the abovementioned limitations on the facts that may be discussed before the Board, Petitioner and Respondent will be permitted to offer information in addition to that set forth herein in the furtherance of mitigation or aggravation of any penalty which may be imposed by the Board. Petitioner and Respondent will also be permitted to proffer any legal argument to the Board that addresses the Board's determination as to whether any violation of Chapter 471, Florida Statutes, and Chapter 61G15, Florida Administrative Code, has occurred.

The Parties hereby also agree that by entering into this Statement of Undisputed Material Facts they jointly waive any right to a formal hearing under the provisions of Section 455.225(5), Florida Statutes, which provides in material part that "... if any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held."

The Undisputed Material Facts in this case are as follows:

1. FBPE is charged with regulating the practice of engineering pursuant to Chapter 455, Florida Statutes. The above-referenced Administrative Complaint was filed by the FEMC on behalf of FBPE. 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 Ward A. Herlache, P.E. is, and has been at all times material hereto, a licensed professional engineer in the State of Florida, having been issued license number PE 81480. Respondent's last known address is 3801 Harrison Street, Oakland, California 94611.

3. Respondent renewed Respondent's Professional Engineer license on January 18, 2017 and attested that Respondent had completed the required Continuing Education necessary for renewal as required by Section 471.017(3)(a), Florida Statutes.

4. On July 24, 2017, Respondent was provided with a Memo advising Respondent that Respondent was selected to participate in the audit process. On September 4, 2017, Respondent responded to the Audit. Upon review of the information provided by Respondent, it was clear that when Respondent renewed the PE license on January 18, 2017 Respondent lacked the required 4 hours of Area of Practice, 12 hours of General Engineering and the Ethics Courses required for renewal as provided in Section 471.017(3), Florida Statutes.

5. In fact, Respondent did not complete all of the deficiencies in the 4 hours of Area of Practice, 12 hours of General Engineering and the Ethics Courses until October 11, 2017. In order to have been in compliance with Section 471.017 when Respondent certified that Respondent had taken and completed all required CE Courses Respondent was required to have taken and completed all required CE Courses by February 28, 2017.

6. By renewing Respondent's PE license without having completed the required 4 hours of Area of Practice, 12 hours of General Engineering and the Ethics Course at the time that Respondent certified that all required CE Courses had been taken, Respondent violated Section 471.033(1)(a) and Rule 61G15-19.001(6).

7. The Attached VERSA Print-out of the CE Attestation, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 1.

8. The Attached Introduction to Soil Grouting certificate dated August 30, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 2.

9. The Attached Dewatering and Groundwater Control Pt 1 certificate dated September 04, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 3.

10. The Attached Dewatering and Groundwater Control Pt 2 certificate dated September 04, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 4.

11. The Attached Chemical Grouting certificate dated September 04, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 5.


12. The Attached Mobile Applications for Engineers certificate dated September 04, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 6.

13. The Attached Geotextiles in Erosion Control certificate dated September 04, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 7.


14. The Attached Engineering Ethics-General Principles certificate dated August 29, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 8.

15. The Attached 2017 FL Laws and Rules and 2017 Ethics for Florida Engineers certificate dated October 11, 2017, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 9

16. The Attached Letter from Respondent which sets out the circumstance in Respondents explanation as to the matters involved in the complaint dated April 26, 2018, is a true and correct copy of what is on file with the Florida Board of Professional Engineers and attached hereto as Exhibit 10



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