

FILED
Florida Engineers
Management Corporation
7/1/2020 Clerk: Rebecca Valentine

FILED
Department of Business and Professional Regulation
Senior Deputy Agency Clerk
CLERK Brandon Nichols
Date 7/1/2020
File # 2020-03765

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

vs.

FEMC Case No.: 2019018205
2019049770

TIMOTHY A. BARBER, P.E.

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF PROFESSIONAL ENGINEERS (Board) pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on June 10, 2020, by Videoconference, for consideration of the Administrative Complaints (attached hereto as Exhibits A and B) in the above-styled causes. The Board consolidated both cases for hearing. Petitioner was represented by John J. Rimes, Chief Prosecuting Attorney. Respondent was not present and was not represented by counsel.

RULING ON MOTION

Petitioner has filed and properly served upon Respondent in each separate case a Motion for Determination that Respondent forfeited his right to an administrative hearing pursuant to section 120.57(1), F.S. and to convene a section 120.57(2), F.S. hearing not involving disputed issues of material fact. Respondent failed to respond to either Motion.

After consideration of the Motions, the Board finds that Respondent failed to respond to the served Administrative Complaints within the time period provided by law, which constitutes a

waiver of the right to elect a hearing. Accordingly, Petitioner's Motions are GRANTED and the Board convenes a section 120.57(2), F.S., hearing.

FINDINGS OF FACT

1. Respondent was properly served with a copy of both Administrative Complaints and did not file a response to either within 21 days of service.

2. The investigative files provided and accepted into evidence establish the facts alleged in the Administrative Complaints.

3. The Board adopts as its finding of facts the allegations of fact in the Administrative Complaints.

4. Respondent's former license to practice Professional Engineering in Florida was previously Revoked by this Board by Final Order dated January 10, 2019, for substantially similar conduct. Despite the revocation of Respondent's license, Respondent has continued to hold himself out to the public as a Professional Engineer and has continued to cause great public harm, by accepting advance payment for work never performed, and which work Respondent could not even legally perform subsequent to revocation of his professional engineering license.

CONCLUSIONS OF LAW

1. Failure to timely respond to a properly served Administrative Complaint constitutes a waiver of the right to elect a hearing involving disputed issues of material fact pursuant to Section 120.57(1), Florida Statutes.

2. The established facts constitute the violations set forth in the Administrative Complaints, which are adopted and incorporated by reference as the conclusions of law in both cases and for which the Board may impose discipline.

3. The Board is empowered by Sections 455.227 and 471.033, Florida Statutes, to impose a penalty against the Respondent. THEREFORE, IT IS

ORDERED that the Board assesses and imposes an administrative fine in each case of Five Thousand Dollars (\$5,000.00) for a total administrative fine of Ten Thousand Dollars (\$10,000.00), and administrative costs from each case, in the amount of One Hundred Forty Six Dollars and twenty-five cents (\$146.25) and One Hundred Seventeen Dollars (\$117.00), respectively, for total administrative costs of Two Hundred, Sixty Three Dollars and twenty-five cents (\$263.25). It is further

ORDERED that this matter is referred to the appropriate State Attorney's office for investigation and initiation of criminal proceedings pursuant to sections 455.2277 and 471.031(1), F.S. It is further

ORDERED that this matter, along with the Board's previously issued Final Orders involving this Respondent, be referred to the Department of Business and Professional Regulation for further proceedings under section 455.228, F.S. The Board specifically and strongly requests that the Department, with all due haste, seek a civil injunction pursuant to section 455.228(1), F.S., given Respondent's gross, wanton, and repeated violations of the laws and rules of the State of Florida, and the continued great public harm being caused by Respondent's continued unauthorized practice of the profession.

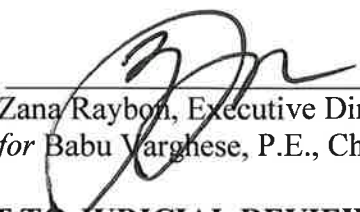
This Final Order shall become effective upon filing with the Clerk of the Department of

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Business and Professional Regulation.

DONE AND ORDERED this 24 day of June, 2020.

BOARD OF PROFESSIONAL ENGINEERS



Zana Raybon, Executive Director
for Babu Varghese, 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 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 **Timothy A. Barber, P.E.**, 36702 Calhoun Road, Eustis, Florida 32736; by interoffice mail to **John J. Rimes, Chief Prosecuting Attorney**, FEMC, 2639 N. Monroe Street B-112, Tallahassee FL 32303 and **Florida Board of Professional Engineers**, 2639 N. Monroe Street B-112, Tallahassee FL 32303; and by electronic mail to **Lawrence Harris**, Senior Assistant Attorney General, Lawrence.Harris@myfloridalegal.com, this 2 day of July, 2020.



Rebecca Valero

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2019018205

TIMOTHY BARBER,

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 TIMOTHY BARBER, 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 was a licensed professional engineer in the State of Florida, having been issued license number PE 63974. Respondent's license was REVOKED by the Board on

January 5, 2019 pursuant to a Final Order entered in FBPE v Timothy Barber, P .E., FEMC Case # 2018003697. The Final Order was not appealed. Respondent's last known address is 36702 Calhoun Road, Eustis, Florida 32736.

3. Offering engineering services to a client and providing sealed and signed engineering documents to the client and/or for purposes of being filed for public record constitutes the practice of engineering as defined in Section 471.005(7), Florida Statutes.

4. Respondent continued to practice engineering after Respondent's license was REVOKED. In January 2019 Respondent contracted with Sandra Egan and Ron Slattum to provide engineering plans for their residence in Altoona, FL to include plans for a new roof, guest room, and wood heater that would pass the building permit requirements. Respondent was paid \$1600.00 for the work but did not perform any services and has unlawfully retained the funds. Additionally, Respondent continues to advertise that Respondent is a professional engineer with a business address at 36702 Calhoun Road, Eustice Florida including listing the REVOKED PE license # 63974 on Respondent's website ACS <http://acsengineeringinc.com/index.html>.

5. Section 471.033(1)(i), Florida Statutes, provides: "The following acts constitute grounds for which the disciplinary actions ... may be taken: (i) Practicing on a ... revoked, ... license."

6. By providing engineering services as set out in Paragraph 4, after Respondent's license was REVOKED, Respondent practiced engineering on a REVOKED license.

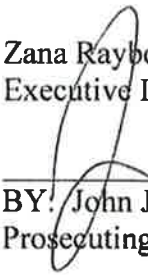
7. Based upon the foregoing, Respondent violated Section 471.033(1)(i), Florida Statutes, by practicing engineering on a REVOKED license.

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 21 day of January, 2020.

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: January 08, 2020
PCP Members: MATTHEWS, FLEMING & DRURY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Timothy Barber at 36702 Calhoun Road, Eustis, Florida 32736, by certified mail and First Class U. S. Mail, on the 21 of January, 2020.


Rebecca Valentine, Paralegal

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2019049770

TIMOTHY A. BARBER

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 TIMOTHY A. BARBER, 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's last known address is 36702 Calhoun Road Eustis, Florida 32736. Respondent is not licensed as a professional engineer in Florida.

3. Respondent, however, at one time held a license as a Professional Engineer in Florida. By Final Order dated January 10, 2019, Respondent's license (# 63974) as a Professional Engineer was REVOKED by the Board. The Final Order was not appealed.

4. Subsequent to the foregoing, on June 4, 2019 Respondent entered into an agreement to provide structural engineering services to the Baumgartner family for a project to create permit plans for four existing structures located at 42328 Dogwood Avenue, Deland, Fl. (Baumgartner Project).

5. Among the services that Respondent agreed to perform for the Baumgartner family was to "...provide structural engineering services for your project."

6. Section 471.031(1)(a) & (b), Florida Statutes, provide in material part: "A person may not: (a) Practice engineering unless the person is licensed or exempt from licensure under this chapter...; (b) A person may not knowingly: "Use .. the name or title "professional engineer" or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer when the person is not licensed under [Chapter 471], including, but not limited to, the following titles, ...structural engineer,...."

7. The practice of engineering is defined in Section 471.005(7), Florida Statutes, to include in material part: "any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, ... of engineering works and systems, ... any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, ..., insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services. A person who practices any branch of engineering; ...

who holds himself or herself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering shall be construed to practice or offer to practice engineering within the meaning and intent of [Chapter 471].

8. Section 455.228(1), Florida Statutes, provides in material part: (1) When the [Department of Business and Professional Regulation] has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, ... the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120”

9. Section 471.038(5), Florida Statutes, provides in material part: “[n]otwithstanding ss. 455.228 and 455.2281, the duties and authority of the department to receive complaints and to investigate and deter the unlicensed practice of engineering are delegated to the [Board of Professional Engineers].” As a result, the Board is authorized to impose the administrative penalty described in Paragraph 8.

10. Section 471.033(1)(a), Florida Statutes, provides in material part: (1)The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken: (a) [v]iolating any provision of ...s. 471.031.” By offering and providing engineering services to the Baumgartner family without holding a license as a Professional Engineer, and by publicly using titles that are reserved to persons holding a license as a Professional Engineer in commercial communications, Respondent violated the provisions of Section 471.031(1)(a).

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 March, 2020.

Zana Raybon
Executive Director

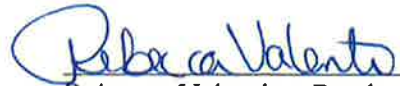

BY: John J. Rimes, III
Prosecuting Attorney

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 11, 2020
PCP Members: MATTHEWS, FLEMING & DRURY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Timothy Barber at 36702 Calhoun Road, Eustis, Florida 32736, by certified mail and First Class U. S. Mail, on the 24 of March, 2020.


Rebecca Valentine, Paralegal