

FILED
Florida Engineers Management Corp
CLERK Rebecca Valentine
DATE 8/18/2022

FILED
Department of Business and Professional Regulation
Senior Deputy Agency Clerk
CLERK: Brandon Nichols
Date: 8/18/2022
File #: 2022-06702

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2021022251

RICHARD M. COLE, 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 December 10, 2020 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 16 day of August, 2022.

FLORIDA BOARD OF PROFESSIONAL ENGINEERS

Zana Raybon

Zana Raybon (Aug 16, 2022 11:34 EDT)

Zana Raybon, Executive Director
For Scott Drury, P.E., CHAIR

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 and email to Richard Cole, P.E. by service upon his attorney of record Jeff Peters, Esquire, at 3551 Blairstone Road, Suite 105, Tallahassee, Florida 32301 and jgpesq@msn.com 5 this 18 day of AUGUST, 2022.

Rebecca Valentine

Rebecca Valentine,
Paralegal

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

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FEMC Case No. 2021022251

RICHARD M. COLE, P.E.,

Respondent,

_____ /

SETTLEMENT STIPULATION

RICHARD M. COLE, 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, RICHARD COLE, P.E., was a licensed engineer in the State of Florida, having been issued license number PE 83903.
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 \$1,608.65 to the Board within six (6) months of the date that the Final Order adopting this Stipulation is filed with the Agency Clerk.

4. 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.

5. 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
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.

6. 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.

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.

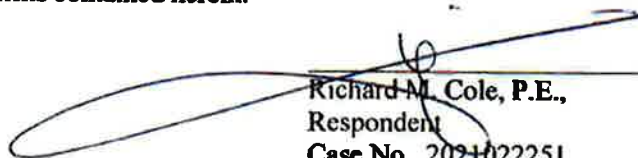
9. This Stipulation is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to

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.


Richard M. Cole, P.E.,
Respondent
Case No. 2021022251
Dated: 5/2/2022

APPROVED this 4th day of May, 2022.

Zana Raybon, Executive Director
Florida Board of Professional Engineers


John Rimes (May 4, 2022 15:13 EDT)

BY: John J. Rimes, III
Chief Prosecuting Attorney

FILED
Florida Engineers Management Corp
CLERK Rebecca Valentine
DATE March 29, 2022

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	3/29/2022
File #	

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2021022251

RICHARD M. COLE, 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 RICHARD M. COLE, 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 83903. Respondent's last known address is 3228 Enterprise Road East, Safety Harbor, Florida 34695.

3. On December 18, 2020, Respondent sealed signed and dated a structural evaluation and report (Forensic Engineering Report) for an existing commercial structure located at 12019 E. Highway 92 in Seffner, Florida.

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), 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.”

5. The Forensic Engineering Report was materially deficient as follows:

(a) Page Three (3) of the Forensic Engineering Report states, “The structure consists of a concrete slab-on-grade foundation with wood framed external walls. The exterior walls are covered with a combination of decorative stucco, decorative stone, common brick, and cementitious siding finish. Interior walls are constructed of wood and finished with painted drywall. The roof is constructed with wood trusses, sheathed with engineered wood board, and covered with concrete tile, three-tab asphalt shingles, rolled asphalt Roofing and single ply thermoplastic polyolefin (TPO) roofing covering.” However, based on photos from the Forensic Engineering Report and additional photographic material the majority of the exterior walls and the interior separation walls were constructed of cast-in-place concrete and concrete masonry unit (cmu); the existing roof structure is a joist system consisting of a wood top and bottom chord with metal web members; the roofing appeared to be a combination of modified bitumen, metal panel roofing, and insulated roof panels. These photos contradict the structural elements called out within the Forensic Engineering Report.

(b) The Forensic Engineering Report references the International Building Code, Residential on page 8, and the Florida Building Code, Residential on pages 9, 10, and 14 of the Forensic Engineering Report. However, the structure evaluated in the Forensic Engineering Report is a

commercial building, and only the Florida Building Code should be referenced, not the International Building Code, nor any residential building codes.

(c) The Forensic Engineering Report states “The Lateral Force-Resisting System (LFRS) was found to be substantially sound and has no discernable reductions in the capacity of any elements.” However, the pictures provided within the Forensic Engineering Report indicate a significantly damaged structure to include exterior walls likely functioning as shear walls.

6. The Forensic Engineering Report contains deficiencies including; but not limited to, those set forth in Paragraphs One (1) through Five (5). As set forth therein, the Forensic Engineering Report was materially deficient due to Respondent’s erroneous description of the buildings’ structure; the use of the wrong building code, significant errors contained within Respondent’s description of the damage to the structure and due to Respondent’s failing to follow accepted engineering standards. 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 engineering documents that were issued 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 Forensic Engineering Report and (2) the Forensic Engineering Report was not issued in compliance with acceptable engineering principles.

7. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(a), Florida Statutes, by violating and Section 471.033(1)(g), Florida Statutes, by engaging in negligence in the practice of engineering as defined in Rule 61G15-19.001(4), Fla. Admin Code.


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

FBPE vs. Richard M. Cole, P.E., Case No. 2021022251

time, as provided for in Section 455.227(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 29th day of March, 2022.

Zana Raybon
Executive Director

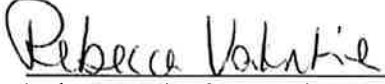

BY: John J. Rimes, III
Prosecuting Attorney

COUNSEL FOR FEMC:

John J. Rimes, III
Prosecuting Attorney
Florida Engineers Management Corporation
2400 Mahan Dr.
Tallahassee, Florida 32308
Florida Bar No. 212008
JR/rv
PCP DATE: March 16, 2022
PCP Members: MATTHEWS, ALBERGO & PEPPER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Richard Cole, P.E. at 3228 Enterprise Road East, Safety Harbor, Florida 34695, by certified mail and First-Class U. S. Mail, on the 30 of March, 2022.


Rebecca Valentine, Paralegal