

FILED
Florida Engineers Management Corp
CLERK Rebecca Valentine
DATE 2/14/2023

FILED
Department of Business and Professional Regulation
Senior Deputy Agency Clerk
CLERK: Brandon Nichols
Date: 2/14/2023
File #: 2023-01086

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2022016833

MARIANO V. FERNANDEZ, P.E.,

Respondent,
_____ /

FINAL ORDER ADOPTING SETTLEMENT STIPULATION

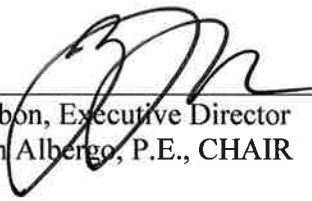
THIS CAUSE came before the FLORIDA BOARD OF PROFESSIONAL ENGINEERS (“Board”), pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on February 9, 2023 in Orlando, Florida, for the purpose of considering a Settlement Stipulation (attached hereto as “Exhibit A to Final Order”) entered into between 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 13 day of February, 2023.


FLORIDA BOARD OF PROFESSIONAL ENGINEERS



Zana Raybon, Executive Director
For Dylan Albergo, 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 Mariano Fernandez by service upon his attorney of record: Yisel Villar, Esquire at Two Datan Center, Suite 1910, 9130 South Dadeland Boulevard, Miami, Florida 33156 and yisel@jeffweiner.com, this 15 day of February, 2023.



Rebecca Valentine,
Paralegal

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2022016833

MARIANO V. FERNANDEZ, P.E.,

Respondent,

_____ /

SETTLEMENT STIPULATION

MARIANO V. FERNANDEZ, 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, MARIANO FERNANDEZ, P.E., was a licensed engineer in the State of Florida, having been issued license number PE 40115.
2. Respondent was charged by an Administrative Complaint filed by FEMC, and properly served upon Respondent with violations of Chapters 471 and 455, Florida Statutes. A copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit “A”.

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’s license to practice engineering shall be REPRIMANDED.

4. Respondent shall pay an ADMINISTRATIVE FINE of \$6,000.00 (\$5,000.00 for Count I and \$1,000.00 for Count II) and COSTS of \$74.10 to the Board within thirty (30) days of the date that the Final Order adopting this Stipulation is filed with the Agency Clerk.

5. Respondent’s Professional Engineer license shall be placed on **PROBATION** for a period of **TWO (2) YEARS** commencing upon the date the Final Order adopting 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 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.

8. Respondent shall take and pass the Auburn University Online Professional Development Course "Engineering Ethics and Professionalism," Course No. V10F-22, within ninety (90) days of the filing date of this Final Order.

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.



Mariano Fernandez, P.E.,
Respondent

Case Nos. 2022016833

Dated: 11.9.2022

APPROVED this 14th day of November, 2022.

Zana Raybon, Executive Director
Florida Board of Professional Engineers



John Rimes (Nov 14, 2022 13:12 EST)

BY: John J. Rimes, III
Chief Prosecuting Attorney

FILED
Florida Engineers Management Corp
CLERK: Rebecca Valente
DATE: 7/29/2022

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK: Evette Lawson-Proctor
Date: 7/29/2022
File #:

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2022016833

MARIANO V. FERNANDEZ, 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 MARIANO V. FERNANDEZ, 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 40115. Respondent's last known address is 9503 SW 82 Street, Miami, Florida 33173.

3. On July 1, 2021, pled guilty and was found guilty with adjudication withheld of one count of violating Section 838.016, Florida Statutes – Compensation/Reward for Official Behavior/Unlawful Compensation. As disposition of the criminal charge, the Court placed Respondent on Community Control with GPS and charged Respondent costs and fees totaling \$598 along with an obligation to pay St. Jude’s Research Hospital \$24,000.

4. The facts underlying the July 1, 2021 guilty plea involved Respondent, while working as the Director of the Building Department for the City of Miami Beach, receiving unlawful benefits from an entity that operates a hotel on Miami Beach and which, as a result of its activities, sought and received various permits from the Building Department for the City of Miami Beach. Additionally, the entity was subject to various penalties from the City of Miami Beach which were not enforced by the Building Department while Respondent was accepting benefits from the entity while Respondent acted as Director of the Building Department.

5. Respondent never reported the July 1, 2021 guilty plea to FEMC or the Board.

6. Section 471.033(1)(a), Florida Statutes, provides: “[t]he following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken: (a) Violating any provision of s. 455.227(1),...” Section 455.227(1)(t), Florida Statutes, provides that the license of a professional engineer may be disciplined for “[f]ailing to report in writing to the board or, if there is no board, to the department within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction. A licensee must report a conviction, finding of guilt, plea, or adjudication entered before the effective date of this paragraph within 30 days after the effective date of this paragraph.”

7. Section 471.013(1)(a), Florida Statutes, provides in material part: “A person shall be entitled to take an examination for the purpose of determining whether she or he is qualified to practice in this state as an engineer if the person is of good moral character....” Insofar as being of good moral character is a specific prerequisite to becoming licensed as a Professional Engineer, the maintenance of such good moral character directly relates to the practice of engineering or to the ability to practice engineering.

8. Section 471.033(1)(d), Florida Statutes, provides that disciplinary action may be taken against a Professional Engineer for “[b]eing convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of engineering or the ability to practice engineering.” Likewise, Section 455.227(1)(c), Florida Statutes, provides that disciplinary action can be taken against a Professional Engineer for “[b]eing convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.”

9. By entering a plea of guilty to violating Section 838.016, Florida Statutes – Compensation/Reward for Official Behavior/Unlawful Compensation, Respondent committed a crime of moral turpitude. As a result, Respondent has not maintained the good moral character required of a Professional Engineer. Therefore, Respondent’s conviction directly relates to the Respondent’s practice of engineering and to Respondent’s ability to practice engineering.

10. Based on the foregoing, Respondent is charged with violating Sections 455.227(1)(c) and 471.033(1) (d), Florida Statutes, by entering a plea of guilty of a crime which directly relates to the practice of engineering or the ability to practice engineering.

COUNT I

11. Petitioner realleges and incorporates Paragraphs One (1) through Six (6) as if fully set forth in this Count One.

12. Respondent failed to report the July 1, 2021 conviction to FEMC or the Board within 30 days as required by Section 455.227(1)(t), Florida Statutes.

13. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(a), Florida Statutes, by violating the provisions of Section 455.227(1)(t), Florida Statutes.

COUNT II

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

15. By being found guilty of violating Section 838.016, Florida Statutes, Respondent was found guilty of committing a crime of moral turpitude and thus has not maintained the good moral character required of a Professional Engineer. As a result, Respondent's conviction directly relates to the Respondent's practice of engineering and to Respondent's ability to practice engineering.

16. Based upon the foregoing, Respondent is charged with violating Sections 455.227(1)(c) and 471.033(1)(d), Florida Statutes.

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 25th day of July, 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: July 13, 2022
PCP Members: MATTHEWS, RAMSEY & PEPPER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Respondent Mariano Fernandez by service upon his attorney of record: Yisel Villar, Esquire at Two Datan Center, Suite 1910, 9130 South Dadeland Boulevard, Miami, Florida 33156, by certified mail and First-Class U. S. Mail, on the 29 of July, 2022.


Rebecca Valentine, Paralegal