

FILED
Florida Engineers Management Corp
CLERK Rebecca Valentin
DATE 5/03/2023

FILED
Department of Business and Professional Regulation
Senior Deputy Agency Clerk
CLERK: Brandon Nichols
Date: 5/3/2023
File #: 2023-03202

**STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS**

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC CASE NO.: 2022034964

LICENSE NO.: PE 53268

JAMES A. CARTER, 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 April 13, 2023, in Tampa, Florida, for hearing regarding 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 NOT present and was NOT represented by legal counsel. Upon consideration of the material presented and being otherwise advised in the premises, the Board makes the following findings and conclusions.

RULING ON MOTION

Petitioner has filed and properly served upon Respondent 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 the Motion.

After consideration of the Motion, the Board finds that Respondent failed to respond to the served Administrative Complaint within the time period provided by law,

which constitutes a waiver of the right to elect a hearing. Accordingly, Petitioner's Motion is 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 the Administrative Complaint and did not file a response within 21 days of service.

2. The investigative file provided and accepted into evidence, without objection, establishes the facts alleged in the Administrative Complaint.

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

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 Complaint, which are adopted and incorporated by reference as the conclusions of law in this case 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 AND ADJUDGED:

1. Respondent's Florida Professional Engineering License, No. PE 53268 is REPRIMANDED.

2. Respondent's Florida Professional Engineering License, No. PE 53268 is SUSPENDED upon the effective date of this Final Order.

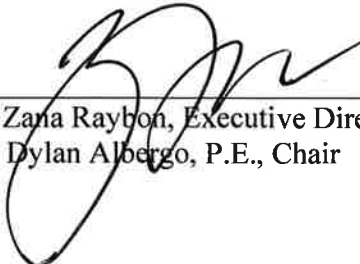
3. Prior to reinstatement of the suspended license, and as conditions of reinstatement, Respondent shall comply with the following:

- a. Respondent shall pay an administrative FINE of One Thousand Dollars (\$1,000.00) and administrative COSTS in the amount of Forty-Eight Dollars and seventy-five cents (\$48.75);
- b. Respondent shall take and pass the Board's Laws and Rules Study Guide;
- c. Respondent shall take and pass the Auburn University Online Professional Development Course "Engineering Ethics and Professionalism," Course No. V10F-23;
- d. Respondent shall submit documentation of compliance with ALL continuing education requirements necessary for biennial licensure renewal; and
- e. Respondent shall Petition for Reinstatement, and shall personally appear before the Board at the meeting where the Petition is considered.

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

DONE AND ORDERED this 7 day of May, 2023.

BOARD OF PROFESSIONAL ENGINEERS


By Zana Raybon, Executive Director
for Dylan Albergo, 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 **James A. Carter, P.E.** 129 East 55th Street, Apt. 1, Brooklyn, New York 11203; 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**, Senior Assistant Attorney General, Lawrence.Harris@myfloridalegal.com this 3 day of May, 2023.



FILED
Florida Engineers Management Corp
CLERK Rebecca Valentine
DATE 11/14/2022

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS



FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2022034964

JAMES A. CARTER, 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 JAMES A. CARTER, 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 53268. Respondent's last known address is 129 East 55th Street, Apt. 1, Brooklyn, New York 11203.

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, 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 the same day.

4. Respondent renewed Respondent’s Professional Engineer license on January 14, 2021 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 August 17, 2021, Respondent was provided with a Memo sent to Respondent’s email address on file with the Board advising Respondent that Respondent was selected to participate in the audit process. No response was forthcoming. Subsequently, numerous efforts to contact Respondent by telephone at several numbers in addition to that provided by Respondent in respondent’s Board record again with no success. Finally, a hard copy was mailed to Respondent’s address on file with the Board. Again, no response. It is to be noted that Sections 455.275(1) and (2), Florida Statutes, require that Respondent is responsible for maintaining Respondent’s current mailing address, e-mail address and physical address with the Board.

6. Rule 61G15-22.006 Demonstrating Compliance; Audits; Investigations, provides:

(1) In order to demonstrate compliance with continuing education requirements, licensees must affirmatively declare completion of the continuing education requirements upon licensure renewal.

(2) The Board will randomly audit a minimum of three percent (3%) of licensees to assure that the continuing education requirements are met.

(a) In addition, licensees audited in the previous biennium who failed to demonstrate compliance will be included with the group of licensees audited for the current renewal cycle.

(b) Licensees whose void license was reactivated during the previous renewal cycle will be included within the group of licensees audited for the current renewal cycle.

(c) A failure to produce documentation of compliance with continuing education requirements during an audit will result in the opening of a disciplinary complaint against the licensee for violation of paragraph 61G15-19.001(6)(s), F.A.C. If a violation is proven, the penalty shall be within the guidelines established by sub-subparagraph 61G15-19.004(2)(g)4.i., F.A.C.

(3) The licensee shall retain such receipts, vouchers, certificates, or other papers as may be necessary to document completion of the continuing education pursuant to an audit for four (4) years from the date of completion of the continuing education activity.

In addition, the Board shall use attendance information submitted by the provider to determine whether licensees can demonstrate compliance.

(4) In addition to auditing licensee compliance as provided in subsection (2), to monitor licensee compliance with continuing education requirements, any investigation conducted pursuant to Section 455.225, F.S., shall be expanded to include investigation of compliance with continuing education.

7. By not responding to the numerous efforts to determine Respondent's compliance with the CE renewal requirements, Respondent, as provided in Rule 61G15-22.006(2)(c), has violated Rule 61G15-19.001(6)(s) which provides: "[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. 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."

9. By renewing Respondent's PE license and by failing to produce documentation of compliance with continuing education requirements during an audit Respondent has violated Section 471.033(1)(a) and Rules 61G15-19.001(6)(s) and Rule 61G15-22.006.

10. Based upon the foregoing Respondent is hereby charged with violating Section 471.033(1)(a) and Rules 61G15-19.001(6)(s) and Rule 61G15-22.006.

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 14th day of November, 2022.

Zana Raybon
Executive Director



John J. Rimes, Nov 14, 2022 09:13 EST
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: November 02, 2022
PCP Members: MATTHEWS, RAMSEY & PEPPER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to James A. Carter, P.E. at 129 East 55th Street, Apt. 1, Brooklyn, New York 11203, by certified mail and First-Class U. S. Mail, on the 17 of November, 2022.


Rebecca Valentine, Paralegal