

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 #: 2023-03197

**STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS**

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC CASE NO.: 2021015640

LICENCSE NO.: PE 45914

MICHAEL F. KELLY, 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 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 NOT present NOR 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 their 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 was provided and accepted into evidence without objection, and 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.

4. There is competent, substantial evidence to support the Board's findings of fact and conclusions of law. Therefore, it is

ORDERED AND ADJUDGED that

1. Respondent's Florida Professional Engineering License, No. PE 45914 is REPRIMANDED.

2. Respondent shall pay an administrative FINE of Five Thousand Dollars (\$5,000.00) and administrative COSTS in the amount of One Thousand, Three Hundred Twenty-Six Dollars and twenty cents (\$1,326.20) within thirty (30) days of the effective date of this Final Order;

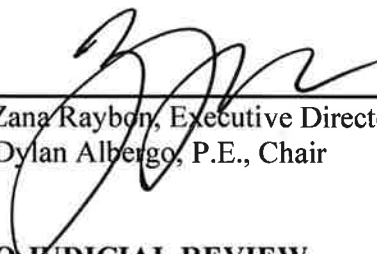
3. Respondent shall take and pass the Board's Laws and Rules Study Guide within ninety (90) days of the filing date of this Final Order;

4. Respondent shall take and pass the Auburn University Online Professional Development Course "Engineering Ethics and Professionalism," Course No. V10F-23, within ninety (90) 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 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 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: **Michael F. Kelley, P.E.**, 2718 North 40th Street, Tampa, Florida 33605; interoffice mail to: **John J. Rimes**, Chief Prosecuting Attorney, FEMC, 2400 Mahan Drive, Tallahassee, Florida 32308 and **Board of Professional Engineers**, 2400 Mahan Drive, Tallahassee, Florida 32308; and by electronic mail to: **Lawrence D. Harris**, Senior Assistant Attorney General, Lawrence.Harris@myfloridalegal.com this 3 day of May, 2023.

Rebecca Valentine

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

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK: Evette Lawson-Proctor
Date: 11/14/2022
File #:

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

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v.

FEMC Case No. 2021015640

MICHAEL F. KELLEY, 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 MICHAEL F. KELLEY, 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 45914. Respondent's last known address is 2718 North 40th Street, Tampa, Florida 33605.

3. Respondent through Respondent's engineering firm contracted to perform a due diligence study to determine the feasibility of constructing a residence on Sunset Key, an island. Respondent entered into a signed proposal and agreement (Agreement) to perform certain specific services. After completion of the due diligence study, Respondent's firm requested additional fees to finalize the study.

4. The Agreement set out the following scope of work:

1. Transcribe mean highwater (MHW) to a conceptual site plan.
2. Delineate wetlands.
 - a. Cut the line through the trees.
 - b. Have FDEP verify the line.
 - c. Survey the line.
 - d. Transcribe wetlands line to a conceptual site plan.
3. Create conceptual site plan.
 - a. Show MHW and wetlands delineation lines
 - b. Show dream home footprint
 - c. Show prospective compliance with all Pasco County LDC.

5. Respondent completed tasks 2.a and 2.c only. None of the other tasks were completed even though Respondent stated directly to Respondent's client that all the tasks were completed.

6. 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), Fla. Admin. 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.” Respondent, as an entity holding a CA from the Board, is subject to discipline as provided in Section 471.023(5), Florida Statutes, “... in the same manner and on the same grounds as disciplinary action against a licensed engineer.”

7. Respondent has provided no explanation for never providing to Respondent’s client, the engineering documents for which Respondent was paid. As a result, insofar as Respondent accepted the client’s funds and failed to perform the services agreed upon, Respondent failed to exercise due care and has failed to have due regard for engineering standards and principles.

8. As set forth in Paragraphs Three (3) through Five (5) Respondent failed to exercise due care and has failed to have due regard for engineering standards and principles.

9. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

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 Rimes, III Nov 14, 2022 08:58:15 ET

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 Michael F. Kelley, P.E. at 2718 North 40th Street, Tampa, Florida 33605, by certified mail and First-Class U. S. Mail, on the 17 of November, 2022.


Rebecca Valentine, Paralegal