

FILED
Florida Engineers Management Corp
CLERK Rebecca Valente
DATE 01/11/2024

FILED
Department of Business and Professional Regulation
Senior Deputy Agency Clerk
CLERK: Brandon Nichols
Date: 1/11/2024
File #: 2024-00236

**STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS**

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC CASE NO.: 2022029520

LICENSE NO.: PE 54280

DAVID A. WIKER, 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 December 7, 2023, in Tallahassee, 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 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

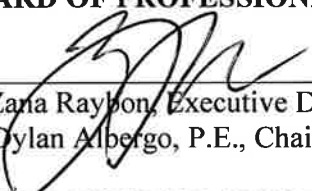
ORDERED AND ADJUDGED that Respondent's Florida Professional Engineering License, No. PE 54280, is SUSPENDED until reinstated by the Board. Reinstatement of the license will only be considered under the following conditions:
 - a. Respondent shall submit documentation of compliance with ALL continuing education requirements;

- b. Respondent shall submit documentation of compliance with ALL terms imposed by Final Order, Issued December 1, 2020, in Case No. 2020009157; and
- c. Respondent shall pay costs of investigation and prosecution of Sixty-Two Dollars and forty cents (\$62.40); and
- d. 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 10 day of January, 2024.

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 **David A. Wiker, PE**, 11755 South Waverly Street, Olathe KS 66061; 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 12 day of January, 2024.

Rebecca Valentine

FILED
Florida Engineers Management Corp
CLERK Rebecca Valentine
DATE 2/13/2023



STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2022029520

DAVID A. WIKER, 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 DAVID A. WIKER, 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 54280. Respondent's last known address is 11755 South Waverly Street, Olathe, Kansas 66061.

3. On December 1, 2020, a Final Order (Final Order) was entered by the Board in FEMC Case No. 2020009157. The Order was not appealed.

4. The Final Order provided in material part that Respondent's PE license was subjected to the following disciplinary penalties:

Administrative Fine of \$500.00 – Due within 1 year of the Filed Final Order

Costs of \$78.00 - Due within 1 year of the Filed Final Order

Board Approved Course in Engineering Professionalism and Ethics (within 1 year of the Filed Final Order)

Board's Study Guide - Due within 1 year of the Filed Final Order

5. Respondent has NOT complied with ANY of the terms of the Final Order.

6. Section 471.033(1)(k), Florida Statutes, provides that an engineer is subject to discipline for ... “[v]iolating any order of the board or department previously entered in a disciplinary hearing.” For the reasons set forth in Paragraphs 3-5 above, Respondent has violated the terms of the Final Order in FEMC Case No. 2020009157.

7. Based upon the foregoing, Respondent is charged with violating Section 471.033(1)(k), 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 30th day of January, 2023.

Zana Raybon
Executive Director


John Rimes (Jan 30, 2023 05:11 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: January 18, 2023
PCP Members: MATTHEWS, PISTORINO & HAHN

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to David A. Wiker, P.E. at 11755 South Waverly Street, Olathe, Kansas 66061, by certified mail and First-Class U. S. Mail, on the 2 of February, 2023.


Rebecca Valentine, Paralegal

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2022029520

DAVID A. WIKER, P.E.,

Respondent,

**MOTION TO DETERMINE THAT RESPONDENT HAS FORFEITED
RESPONDENT'S RIGHT TO AN ADMINISTRATIVE HEARING UNDER
SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND TO CONVENE
PROCEEDINGS UNDER SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES**

COMES NOW Petitioner, the Florida Engineers Management Corporation ("FEMC"), pursuant to Rule 28-106.204, Florida Administrative Code, and states:

1. On January 31, 2023, a copy of the Administrative Complaint was sent, by Certified Mail, to Respondent. The United States Postal Service was unable to advise whether the Certified Mailing was received by Respondent and the Certified Mail was not returned to Petitioner.

2. On August 08, 2023, Petitioner attempted to serve an Administrative Complaint on Respondent (Certificate of Service attached hereto as Exhibit 1). The process server was able to effectuate service of the Administrative Complaint.

3. Respondent has failed to respond to the Administrative Complaint.

4. Therefore, in order to preserve its right to a hearing, Respondent must have filed a response to the Administrative Complaint by filling out the Election of Rights form or by


filing a petition for an administrative hearing with Florida Engineers Management Corporation by August 29, 2023. Such an action is required in order for Respondent to preserve its right to a hearing on the charges contained in the Administrative Complaint. As set out in the Election of Rights form it is mandated that Respondent has “attached to this form a petition or written statement in conformance with Rule 28-106.201, F. A. C. ...” in order to be afforded the right to an administrative hearing.

5. To date, no response of any kind has been received by the Board of Professional Engineers or by the Florida Engineers Management Corporation.

6. Since Respondent has not filed a request for an administrative hearing, Respondent has, therefore, waived any right to an administrative hearing. As a result, it is appropriate for the Board to conduct these proceedings under the provisions of Sections 120.569 and 120.57(2), Florida Statutes, and Rules 28-106.301-307, Fla. Admin. Code. Under such provisions, the material facts in the Administrative Complaint are deemed undisputed, and the Board will proceed to render its conclusions of law and impose such penalties upon Respondent as the Board determines are appropriate.

WHEREFORE, Petitioner respectfully moves this Board to determine that Respondent has forfeited Respondent’s rights to an administrative hearing and to deem the material facts in the Administrative Complaint as undisputed; and, based thereupon, to render such conclusions of law and to impose such penalties upon Respondent as the Board determines are appropriate.


Respectfully submitted,


John Rimes (Sep 20, 2023 09:13 EDT)
John Rimes III
Prosecuting Attorney

Florida Engineers Management Corporation
2639 North Monroe Street, Suite B-112
Tallahassee, Florida 32303
Florida Bar No. 212008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *Motion to Determine that Respondent has Forfeited Respondent's Right to an Administrative Hearing Under Sections 120.569 and 120.57(1), Florida Statutes, and to Convene Proceedings Under Sections 120.569 and 120.57(2), Florida Statutes* was furnished to: David A. Wiker, P.E. at 11755 South Waverly Street, Olathe, Kansas 66061, and dawiker@hotmail.com on the 20th of September, 2023.



John Rimes (Sep 20, 2023 09:13 EDT)
John J. Rimes, III, Attorney

VERIFIED RETURN OF SERVICE

State of Florida

County of

FBPE Court

Case Number: 2022029520

Plaintiff: Florida Board of Professional Engineers

vs.

Defendant: David A. Wiker, P.E.

For: John J. Rimes

Florida Board of Professional Engineers

Received by Vause's Process Service on the 25th day of July, 2023 at 2:55 pm to be served on David A. Wiker P.E., 11755 South Waverly Street, Olathe, KS 66061. I, Mackenzie Green do hereby affirm that on the 8th day of August, 2023 at 5:59 pm, executed service by delivering a true copy of the Cover Letter, Administrative Complaint, Settlement Stipulation, Election of Rights, Explanation of Rights in accordance with state statutes in the manner marked below:

☒ INDIVIDUAL SERVICE: Served the within-named person.

☐ SUBSTITUTE RESIDENTIAL SERVICE: By serving a copy of the above Document(s) to the defendant's usual place of abode on a person permanently residing there who is 15 years of age or older and informing said person of the contents. Served _____ as _____

☐ SUBSTITUTE SERVICE AT A BUSINESS WITH A SUBPOENA OR NON-LEGAL DOCUMENT: By delivering documents at the named entity's place of business at the request of the client, by Serving: _____ as _____

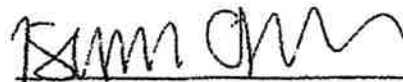
_____ who is authorized to accept on behalf of the named entity for service.

☐ POSTING - By posting the copies in a conspicuous manner to the address of the person/entity being served

☐ NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: _____

I am over the age of 18 and not a party to this action. Under Penalties of Perjury, I declare I have read the foregoing document and the facts stated in it are true. I am over the age of 18, of sound mind and neither a party to or interested in the above suit.



PROCESS SERVER # PPS23-0524
Appointed in accordance with State Statutes

Vause's Process Service
P.O. Box 1777
Tallahassee, FL 32302-1777
(850) 656-2605

Our Job Serial Number: 2023005900