

**STATE OF ALABAMA
BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND
LAND SURVEYORS**

IN RE THE MATTER OF:

MARCUS D. PHILLIPS

Case No. 07-43-B

Case No. 08-34-B

FINAL ORDER

This cause was called for hearing on April 30, 2009 at 9:00 a.m. Members of the Investigative Committee of the Alabama Board of Licensure for Professional Engineers and Land Surveyors (hereinafter referred to as "Board") met in the office of the Board for an Administrative Hearing concerning the allegations filed against Mr. Marcus D. Phillips (hereinafter referred to as "Respondent"). The Board was not present but was represented by Mr. Benjamin Albritton, Board Counsel. Governmental Hearing Officer Dana A. Billingsley presided over the Hearing. Also present at the Hearing were Ms. Regina Dinger, Executive Director of the Board, and Mr. William R. Huett, Assistant Executive Director and Investigator for the Board. The Respondent was present at the hearing and provided testimony in his own behalf.

STATEMENT OF ISSUES

On June 8, 2001, Respondent was issued a certificate of licensure (certificate number 24334) from the Board authorizing him to practice land surveying in the State of Alabama. Pursuant to a Consent Order signed by Respondent on May 8, 2007 and accepted by the Board on June 8, 2007, Respondent's license to practice land surveying was suspended for six (6) months, beginning June 7, 2007 through December 7, 2007 for practicing land surveying with a lapsed license between December 31, 2002 and November 21, 2005. At present, Respondent's license is current through December 31, 2009.

On August 27, 2007 the Board received a complaint from Mr. Kent Holsclaw (Case No. 07-43-B) alleging the Respondent had practiced land surveying in the State of Alabama during the time his license to practice was in suspended status.

On June 11, 2008 the Board received a complaint from Mr. Micah Cochran, a GIS Coordinator for the City of Athens, Alabama (Case No. 08-34-B) alleging the Respondent had violated Code of Alabama 1975 § 34-11-2, and *Administrative Code* § 330-X-14-.06(a) 2 & 5 by providing a survey during the period of time his license to practice land surveying in the State of Alabama was suspended. The alleged violations are as follows;

Count I

Respondent provided land surveying services during a time when his license to practice land surveying in the State of Alabama was suspended. Respondent presented a revised survey on July 24, 2007 to the Health Department in Lawrence County, Alabama that was dated February 28, 2007 and was relative to property owned by Mr. Merrell Anderton. Engaging in the practice or offer to practice of land surveying in the State of Alabama during the time a license is suspended is a violation of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-7(b) and § 34-11-11(a)2. It is also a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.06(a) 1.

Count II

Respondent provided and received payment for a land survey dated August 24, 2007 for Century 21 relative to a sale of property located in Lawrence County, Alabama. Engaging in the practice or offer to practice of land surveying in the State of Alabama during the time a license is suspended is a violation of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-7(b) and § 34-11-11(a)2. It

is also a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.06(a) 1.

Count III

On September 26, 2007 Respondent provided a survey containing his professional seal and signature to Attorney Deborah L. Long relative to the sale of property in Limestone County, Alabama. Engaging in the practice or offer to practice land surveying in the State of Alabama during the time a license is suspended is a violation of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-7(b) and § 34-11-11(a)2. It is also a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.06(a) 1.

Count IV

Respondent provided an updated survey and a legal description dated September 27, 2007 relative to property in Morgan County, Alabama for Mr. Greg Henry. Engaging in the practice or offer to practice land surveying in the State of Alabama during the time a license is suspended is a violation of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-11(a)2. It is also a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.06(a) 1.

Count V

Respondent submitted an invoice for surveying services in the amount of \$450.00 dated August 25, 2007 to Century 21 relative to a sale of property in Lawrence County, Alabama. Engaging in the practice or offer to practice of land surveying in the State of Alabama during the time a license is suspended is a violation of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-11(a)2. It is also a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.06(a) 1.

Count VI

Respondent submitted an invoice for surveying services in the amount of \$250.00 dated October 25, 2007 to Century 21 relative to a sale of property in Lawrence County, Alabama. Engaging in the practice or offer to practice of land surveying in the State of Alabama during the time a license is suspended is a violation of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-11(a)2. It is also a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.06(a) 1.

Count VII

Respondent submitted an invoice for surveying services in the amount of \$250.00 dated October 30, 2007 to Brad Dotson relative to a survey of Lot 4 Block A Holwood Subdivision in Morgan County, Alabama. Engaging in the practice or offer to practice of land surveying in the State of Alabama during the time a license is suspended is a violation of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-11(a)2. It is also a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.06(a) 1.

CONCLUSIONS OF LAW

The Board hereby states that Respondent is subject to the provisions of Title 34, Chapter 11, Code of Alabama 1975 § 34-11-7(b) and § 34-11-11(a)2 and *Administrative Code* § 330-X-14-.06(a)(1).

CONCLUSION

After hearing the testimony of all the witnesses presented by the Board and after considering all the evidence presented in the above-referenced case, Governmental Hearing Officer Dana Billingsley made the following recommendation;

1. Respondent's license to practice the profession of land surveying in the state be revoked in accordance with the provisions of Alabama Code § 34-11-11(1975) and the *Alabama Administrative Code* § 330-X-16-.06.

After deliberation and a review of the Governmental Hearing Officer's recommendations, the Board finds Respondent **Guilty** of the allegations made against him.

In accordance with the Code of Alabama 1975 § 34-11-11(m) which states the Board has the power to impose any and all disciplinary penalties and the licensee shall be responsible for the cost of such action if found guilty the Board respectfully modifies the Governmental Hearing Officer's proposed recommendation for disciplinary action to include payment of the cost of the hearing relative to this cause.

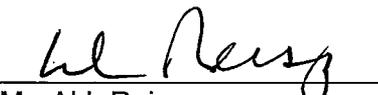
The Board hereby **Orders** as follows:

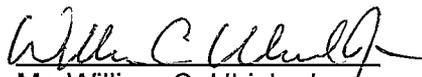
1. Respondent shall pay to the Board, twenty two hundred and seventy-six dollars and thirty cents (\$2,276.30) for cost of the Hearing.
2. Respondent's license shall be **Revoked** effective the date of this Order.
3. The Hearing and Final Order will be public record

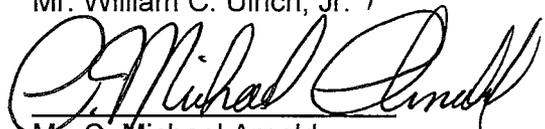
Done this the 23rd day of July, 2009

RECUSED


Mr. Don T. Arkle


Mr. Al I. Reisz


Mr. William C. Ulrich, Jr.


Mr. C. Michael Arnold


Mr. W. Gerald Wilbanks



AlaFile E-Notice

03-CV-2009-001317.00

Judge: CHARLES PRICE

To: ALBRITTON BENJAMIN H
balbritton@ago.state.al.us

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**MARCUS PHILLIPS V BD OF PROFESSIONAL ENGINEERS & LAND SURVEYORS OF STA
03-CV-2009-001317.00**

The following matter was FILED on 12/29/2009 10:34:20 AM

Notice Date: 12/29/2009 10:34:20 AM

**MELISSA RITTENOUR
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL 36102**

334-832-4950



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PHILLIPS MARCUS,)
)
 Plaintiff,)
)
 V.)
)
 BD OF PROFESSIONAL)
 ENGINEERS & LAND SURVEYORS)
 OF,)
 Defendant.)

Case No.: CV-2009-001317.00

ORDER

The above-styled matter came before the Court on Administrative Appeal for judicial review of the action of the State of Alabama Board of Professional Engineers and Land Surveyors on December 17, 2009 with counsel for both parties present. After hearing arguments from counsel for both parties with plaintiff's counsel conceding that the Administrative Law Judge properly ruled on the merits of the revocation, this Court finds that the matter is due to be and is hereby DISMISSED.

DONE this 29th day of December, 2009.

/s CHARLES PRICE

CIRCUIT JUDGE