

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

IN RE THE MATTER OF:

ROBERT ALAN WALZ

Case No. 2012-11-B

FINAL ORDER

On June 26, 2012, the Alabama Board of Licensure for Professional Engineers and Land Surveyors (hereinafter referred to as "Board") convened for an Administrative Hearing concerning the allegations filed against Robert Alan Walz (hereinafter referred to as "Respondent"). The Board was represented by Mr. Benjamin Albritton, Board Counsel. Administrative Law Judge Dana A. Billingsley presided over the Hearing.

After hearing the testimony of all the witnesses presented by the Board Investigative Committee and after considering all the evidence presented in the above-referenced case, Administrative Law Judge Dana H. Billingsley proposed the following Findings of Fact, Conclusions of Law, and Conclusion and Recommendation.

FINDINGS OF FACT

1. Respondent Robert Walz is a licensed Professional Engineer ("PE"), license number 24958, and was so licensed at all times relevant to the matters stated herein. Respondent's license is currently in lapsed status as of December 31, 2010, due to failure to renew.
2. On February 6, 2012, the Board's Executive Director, Regina Dinger, initiated a Complaint against Respondent, alleging that Respondent had violated ALA. CODE § 34-11-11 (a)(5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2011) by having his license to practice engineering revoked on July 7, 2011, by the Colorado Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors (the "Colorado Board") for

violation of laws or regulations governing the practice of engineering in another state and failure to cooperate with an investigation initiated by the Colorado Board. The Complaint alleges that Respondent had been subject to disciplinary action in another jurisdiction, including the revocation of his PE license in Colorado for failure to respond to that Board, and for reciprocal disciplinary actions against Respondent in North Carolina, Kentucky and Texas in 2008, October 2011 and November 2011, respectively. The Board's Complaint was assigned Case No. 2012-11-B and was sent to Respondent's address of record -Walz Engineering, 11111 Hall Road "M", Suite 110, Utica, Michigan 48317 – via correspondence dated February 6, 2012. A response was requested by February 21, 2012.

3. By Notice dated May 8, 2012, Respondent was notified via Certified and First Class Mail of the date and time of a public hearing to be held concerning his alleged violations of the Board's licensure act and administrative rules, which were specified in detail in the Board's Charges accompanying the Notice. The Board's Charges were signed by its Executive Director on May 8, 2012, and contained a single charge of Unethical Conduct - Disciplinary Action in Another Jurisdiction, as a result of the revocation of Respondent's Colorado PE license on July 7, 2011; the voluntary surrender of Respondent's Kentucky PE license on October 8, 2011; and the revocation of Respondent's Texas PE license on November 17, 2011. The Notice also stated that Respondent was provided a copy of a complaint notification letter via electronic mail on February 24, 2012, and was requested via telephone to provide a response to the Board prior to March 2, 2012; Respondent did not provide a response.

4. The Board's Charges alleged that such acts constituted possible violations of ALA. CODE § 34-11-11(a)2 (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)(1 and 5) (2011), violation of the rules of professional conduct or misconduct in the practice of engineering, and ALA. CODE § 34-11-11(a)(5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2011), which permit the Board to take disciplinary action, including revocation, suspension or the levy of an administrative fine, against a licensee for committing an offense in another jurisdiction that resulted in the revocation, suspension or voluntary surrender, to avoid

disciplinary proceedings, of a license or certificate of licensure, including any agreement or stipulation executed in order to avoid formal disciplinary proceedings.

5. The Notice and Board's Charges complied in all respects with the requirements of ALA. CODE § 41-22-12 (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.03 (2011), and sufficiently apprised Respondent of the nature of the charges against him and of the date, time and place of the hearing.

6. Respondent received the Notice and Charges via Certified Mail on May 15, 2012, at the following address: 48649 Van Dyke Avenue, Shelby Township, Michigan 48317. Respondent did not appear at the hearing. In accordance with ALA. CODE § 41-22-12(d) (1975 as amended) of the Alabama Administrative Procedure Act ("AAPA"), having determined from the evidence presented by the Board that Respondent received proper service of notice scheduled hearing, the undersigned Administrative Law Judge proceeded with the hearing in Respondent's absence.

7. The Board solicited testimony from the following individuals at the hearing; Executive Director Regina Dinger; William R. Huett, Assistant Executive Director; and Board Investigator Robert Herbert.

8. Ms. Dinger testified regarding the issuance of the Complaint, the Board's Charges and the May 8, 2012 Notice to Respondent informing him of the Charges and of the date, time and place for the hearing. Ms. Dinger further stated that Respondent's license was in lapsed status as of December 31, 2010, and that he had designated the following address as his primary address for the Board: 48649 Van Dyke Avenue, Shelby Township, Michigan.

9. Mr. Huett testified that once a Complaint is opened by the Board's Executive Director, he is responsible to investigate the Complaint. In particular, the Board has access, as a member of the National Council for Examiners of Engineers and Surveyors ("NCEES"), to a database which includes violations that have been reported by other states regarding the Board's own licensees. If it is determined that a licensee has been disciplined by another licensing board in

any jurisdiction, the Board initiates a complaint to determine whether the licensee should be subject to disciplinary action relative to those other actions.

10. Mr. Herbert testified that he spoke with Respondent on February 24, 2012, at his telephone number of record regarding the Complaint, confirmed that Respondent had not received the Complaint notification letter and sent a copy of the notification letter to Respondent via e-mail, together with a document entitled, "The Investigative Process." Respondent confirmed that he received the e-mail notification and agreed with Mr. Herbert that he would have until March 2, 2012, to respond to the Complaint. He also confirmed his new mailing address to be 48649 Van Dyke Avenue, Shelby Township, Michigan 48317.

11. Mr. Herbert testified that when he did not receive a response from Respondent by the due date, he attempted to call him on March 19, 21 and 22, 2012, and left voice mail messages for him at the same telephone number at which he had previously contacted Respondent. The answering machine at the called number did not identify the number as belonging to Mr. Walz or Walz Engineering.

12. Mr. Herbert stated that he assimilated the documents referenced in the NCEES database, in support of the Board's Charges. In particular, he provided a copy of the Order of the Colorado Board dated July 7, 2011, which found that Respondent was disciplined by the North Carolina Board of Examiners for Engineers and Surveyors (the "North Carolina Board") for gross negligence, incompetence or misconduct relating to an engineering report he had prepared in 2006. Respondent's address of record as provided to the Colorado Board was listed as 11111 Hall Road, Suite 110, Utica, Michigan 48317.

13. On October 8, 2011, Respondent voluntarily surrendered his PE license and entered into a Consent Decree with the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (the "Kentucky Board"), which cited the disciplinary action taken by the North Carolina Board on September 11, 2008, and subsequent actions taken by the New Hampshire Board of Licensure for Professional Engineers on October 30, 2009; the West Virginia State Board of Registration for Professional Engineers on December 7, 2009; and the Missouri Board

for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects on May 17, 2010. Respondent's address of record as provided to the Kentucky Board was listed as 11111 Hall Road, Suite 110, Utica, Michigan 48317.

14. A screen copy of the November 17, 2011 agenda for the Texas Board of Professional Engineers (the "Texas Board") listed Respondent's name under case number D32517, with a charge of practicing engineering on a project in Texas during a period when Respondent's PE license was in expired status, failure to notify that Board of a change in employment and failure to respond to the Texas Board's inquiries regarding same. On December 14, 2011, Mr. Herbert requested a copy of the Texas Board's action which he received on December 15, 2011. In its Order, the Texas Board accepted the voluntary surrender of Respondent's PE license.

15. On June 20, 2012, Mr. Huett sent a further e-mail to Respondent at his address of record, forwarding another copy of the Board's charges and advising him of the date and time of the hearing. On June 22, 2012, at 10:20 a.m., he also left a voice mail message for Respondent at his telephone number of record, reminding him of the hearing. The answering machine called did not identify the number as belonging to Mr. Walz or Walz Engineering.

CONCLUSIONS OF LAW

1. The Alabama Legislature created the State Board of Licensure for Professional Engineers and Land Surveyors for the purpose of safeguarding life, health and property and promoting the public welfare with regard to the practice of engineering and land surveying within the state. ALA. CODE §§ 34-11-1(b) and (c) (1975 as amended).

2. The Board is empowered to reprimand, censure, fine or place on probation any licensed professional engineer or to suspend, refuse to renew or revoke the certificate of any licensee for violation of the rules of professional conduct prescribed by the Board or misconduct in the practice of engineering. ALA. CODE § 34-11-11 (a)(2) (1975 as amended). See also ALA. ADMIN. CODE r. 330-X-14-.06(a)1 (2011). Consequently, the Board may take action against any licensee as the result of an offense in another jurisdiction resulting in the revocation,

suspension or voluntary surrender, to avoid disciplinary proceedings, of a license, including any agreement or stipulation entered into by a licensee in lieu of formal disciplinary proceedings. ALA.CODE § 34-11-11 (a)(5) (1975 as amended); ALA. ADMIN. CODE r. 330-X-14-.08 (2011).

3. On July 7, 2011, the Colorado Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors revoked Respondent's PE license for violation of laws or regulations governing the practice of engineering in Kentucky, Texas and North Carolina, and failure to cooperate with an investigation initiated by the Colorado Board pursuant to provisions in its licensing law similar to that of ALA. CODE § 34-11-11(a)(5) (1975 as amended).

4. The record supports a finding that Respondent had sufficient notice of the place, date and time of the hearing held in this matter and of the charges against him, as evidenced by the delivery of the Notice and Board's Charges dated May 8, 2012, to Respondent via Certified Mail on May 15, 2012, at the address he provided to Board Investigator Robert Herbert on February 24, 2012. See ALA. CODE § 34-11-11(h) (1975 as amended) ("... a copy of the charges, together with the notice of the time and place of the hearing, shall be personally served on or mailed to the last known address of the individual licensee ... at least 30 days before the date fixed for hearing"). An additional copy of the Board's Charges and notice of the date and time of the hearing were provided to Respondent on June 20, 2012, to the same email address he provided to Mr. Herbert on February 24, 2012. Respondent failed to appear at the hearing or contact the Board in response to either the Complaint or the Charges.

CONCLUSION AND RECOMMENDATION

1. It is incumbent upon a licensee to be familiar with the requirements under Alabama law and the Board's own rules and regulations governing the practice of the profession of engineering, including the Canons of the Rules of Professional Conduct, which prohibit the licensee from engaging in any conduct that discredits or tends to discredit the practice of the profession of engineering. See ALA. ADMIN. CODE r. 330-X-14-.06(a)5. (2011).

2. Respondent has committed violations of the PE licensure laws and regulations in several states, including Colorado, North Carolina, Kentucky and Texas, which constitute violations of Alabama law regulating the practice of engineering, pursuant to ALA. CODE §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2011), including the Alabama Canons of the Rules of Professional Conduct. In particular, the revocation of Respondent's PE license in North Carolina, on which the Colorado Board's Order was based, resulted from a finding of gross negligence, incompetence or misconduct against Respondent relating to an engineering report he had prepared in 2006.

3. As shown above, on the basis of the evidence of record and the testimony presented, it is hereby concluded that Respondent's conduct constitutes violations of ALA. CODE §§ 34-11-11(a)(2) and (5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)(1 and 5). (2011).

4. Accordingly, it is hereby recommended that Respondent's license to practice the profession of engineering in the State of Alabama be REVOKED, in accordance with the provisions of ALA. CODE §§ 34-11-11(2) and (5) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.08 (2011), and that a fine not to exceed \$2,500.00 be imposed on Respondent, in accordance with ALA. CODE § 34-11-11(i) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2011), said fine to be paid to the Board within thirty (30) days of the date of a Final Order issued by the Board.

CONCLUSION

THE BOARD, after deliberation and review, agrees with and adopts as final these Findings of Facts, Conclusions of Law and Conclusions and Recommendations proposed by Administrative Law Judge, Dana H. Billingsley. The Board hereby finds Respondent **GUILTY** of the allegations made against it and hereby **ORDERS** as follows:

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 Administrative Law

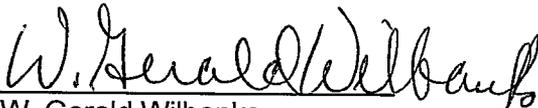
Judge, Dana H. Billingsley's proposed recommendation for disciplinary action to include payment of the cost of the hearing relative to this cause.

1. Respondent's State of Alabama professional engineer license is hereby **Revoked** as of the date of this Final Order.

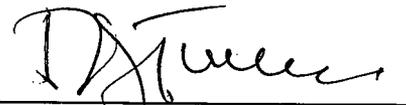
2. Respondent shall pay to the Board a fine of \$2,500.00 (two thousand five hundred dollars) within thirty (30) days of date of Final Order.

3. Respondent shall pay \$1,000.00 (one thousand dollars) to the Board for cost of the hearing relative to this cause.

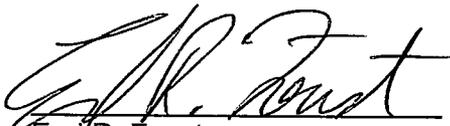
Done this the 26th day of July, 2012


W. Gerald Wilbanks

RECUSED
C. Michael Arnold


Daniel S. Turner

DID NOT ATTEND
Phillip E. Santora


Earl R. Foust


Mark S. Barter


Charles P. Willis