

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

**IN RE THE MATTER OF:**

**M. DON WILLIAMS**

**CASE NO. 2012-17-B**

**FINAL ORDER**

On December 11, 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 M. Don Williams (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 M. Don Williams, III is a licensed Professional Engineer ("PE"), license number 11886, and was so licensed at all times relevant to the matters stated herein. Pursuant to a Consent Order signed by Respondent on May 18, 2010, and accepted by the Board on May 20, 2010, Respondent's license to practice engineering in the State of Alabama was suspended and stayed for four (4) years, beginning May 20, 2010, through May 20, 2014, for numerous violations of ALA. CODE § 34-11-11(a) (2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.05(g) and 330-X-14-.06(a) 1 and 5, concerning at least nineteen (19) sets of design drawings submitted to the Mobile County Inspection Department in Mobile, Alabama between

June 29, 2006 and January 12, 2009, containing errors, omissions and violations of the acceptable standards of practice for engineering.

2. In early 2012, the Board received correspondence from the Alabama Board for Registration of Architects (the "Architects Board") stating that Respondent had entered into a Settlement Agreement with the Architects Board on January 30, 2012, for violations of ALA. CODE §§ 34-2-30(2) and (3), 34-2-32(c) and 34-2-35(e) (1975 as amended) and ALA. ADMIN. CODE r. 11 0-X-4-.02 and -.04, "controlling the practice of architecture ... concerning a project known as the Wemo Tot Spot daycare facility in Mobile, Alabama." In particular, the Settlement Agreement stated that Respondent admitted that his conduct constituted a violation of Alabama law in that "(a) the subject project is more than 2,500 gross square feet in size; (b) the subject project is classified as Education Occupancy by the International Building Code; and (c) [Respondent] engaged the services of Alabama registered architect Terry Beilharz to 'remedy' the project when Respondent was notified by State officials that the project did not comply with Alabama law." Respondent also paid an administrative fine to the Architects Board of One Thousand Dollars (\$1,000.00) under the terms of the Settlement Agreement.

3. On April 5, 2012, the Board's Assistant Executive Director, William R. Huett, notified Respondent that the Board initiated a Complaint on March 26, 2012, relative to the information received from the Architects Board and requested that Respondent provide copies of the documents related to the disciplinary action taken against him by the Architects Board and the Wemo Tot Spot daycare facility by April 18, 2012.

4. By Notice dated October 30, 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 ALA. CODE § 34-11-11 (a) (2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.03(d) - engaging in any other professional matter for which a specific license is required without first being licensed in that profession - and 330-X-14-.06(a)1, which were specified in detail in the Board's Charges accompanying the Notice. The Board's Charges were signed by its Executive Director on October 30, 2012, and contained a single charge of Unethical Conduct- Practice of

Architecture. 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. The Certified Mail was received by Respondent on November 2, 2012.

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

6. Respondent appeared pro se at the hearing and provided testimony on his own behalf regarding the allegations against him.

7. Ms. Dinger testified regarding the issuance of the Complaint, the Board's Charges and the October 30, 2012 Notice to Respondent informing him of the Charges and of the date, time and place for the hearing. Mr. Huett testified that once a Complaint is opened by the Board's Executive Director, he is responsible to investigate the Complaint and to determine, as a part of the Board's Investigative Committee, whether the evidence established probable cause that a violation of the Board's law or rules occurred. Mr. Herbert stated that, pursuant to his investigation of this matter, he assimilated the documents referenced by the Architects Board, which were reviewed by the Investigative Committee and offered at the hearing in support of the Board's Charges.

8. On April 29, 2011, while Respondent's license to practice engineering remained under a stayed suspension, Assistant State Fire Marshal Jeffrey H. Thompson filed a complaint with the Architects Board against Respondent for performing architectural work for the Wemo Tot Spot daycare facility in Mobile without having been properly licensed.

9. On or about July 14, 2011, Debbie Whitman, Legal Research Assistant for the Architects Board, drafted an investigative report regarding Respondent's actions concerning the daycare facility. In particular, the report stated that the daycare's owner, Dianne McKenzie, said that Respondent stamped the building plans and was listed as the project's "Designer and Architect;"

that Respondent stated that "the building is a 5,500 square foot metal building and he was only doing interior completion" (mechanical engineering and life safety aspects); that Respondent was only doing "incidental architecture and didn't think he was doing anything wrong;" and that Respondent intended to send a letter to the Architects Board asking for forgiveness "because apparently the incidental architecture rules had changed."

10. Ms. Whitman's report further stated that in 1996, the Architects Board received a complaint that Respondent "sealed plans not prepared under his direct supervisory control and that he performed services which fell within the scope and practice of architecture," which complaint was subsequently referred to the Alabama Board of Licensure for Professional Engineers and Land Surveyors. On September 14, 1998, the Board notified the Architects Board that Respondent signed a consent order agreeing to a fine and two (2) years probation "based on his lack of competency in sealing plans." Ms. Whitman's report concluded that although Respondent alleged he was practicing "incidental engineering" with regard to the Wemo Tot Spot daycare project, "his actions in this matter mirror other past actions for which he was disciplined."

11. By correspondence dated July 20, 2011, Dan Bennett, acting as a technical advisor for the Architects Board, concluded after reviewing Ms. Whitman's report that "[Respondent] was attempting to practice architecture without a license;" that Mr. Beilharz "stamped" Respondent's drawings "without any first-hand knowledge or true involvement with the project;" and that "[t]here is no evidence that [Respondent] was an employee of Mr. Beilharz prior to this project and I agree with your investigation which implies that their relationship was one of 'convenience' whose sole purpose was to obtain an architect's stamp for the project."

12. In pertinent part, Mr. Beilharz stated the following in correspondence to the Architects Board dated June 24, 2011:

[Respondent] approached me on the day care project after it was completed and permitted by the Mobile County Building Inspection Department. Construction had already begun. The director of the day care, who is the tenant of the building (Gatlin Construction is the general contractor), had submitted plans to the State Fire Marshall because the site is beyond the local fire department jurisdiction. The Fire Marshall has determined the need for architect involvement. [Respondent]

contacted me for remediation of improperly sealed documents in accordance with Section 1 00-X-5-.04 of the Architect's Handbook.

In accordance with that section, I have been employed by the owner of the project. My scope of work is to review the full set of already-prepared documents, assess the life safety and building code aspects of the interior completion of the metal building and to place my seal of review and acceptance on the appropriate drawings. . . . [Respondent] has conducted an on-site inspection in my behalf, and has sent me photographs of the completed work ....

13. Respondent testified that while he agreed under the Settlement Agreement with the Architects Board that he "unintentionally violated architectural licensing law," he did not agree that he violated engineering licensing law. Respondent contends that the architectural rules require licensed architects for projects "greater than 2,500 square feet and educational occupancies;" however, it also "allows engineers to perform architectural services incidental to their engineering practice regarding a building size and occupancy." Respondent opined that he was acting within his engineering practice and that he did not require an architect's license to perform the work for the Wemo Tot Spot daycare. In support of his contention, Respondent referred to the June 2009 edition of the Handbook for Building Officials (the "Handbook"), which is jointly published by the Architects Board and the Alabama Board of Licensure for Professional Engineers and Land Surveyors. In particular, under "Commonly Asked Questions and Answers,"

Respondent cited the following:

**May an Alabama licensed engineer prepare and stamp the architectural portion of building construction documents?**

Alabama law provides that architects or engineers can design structures. Engineers are permitted to perform architectural services incidental to their engineering practice. However, an engineer can only provide services in which he or she is competent to provide by education or experience. This generally limits the scope of building layout and design to less complicated structures and with smaller human occupancy.

14. Respondent stated that engineering law "does not contain a reference to a size or occupancy limitation" and that because incidental architecture is allowed under the rules and regulations of the Board, he should not be found to be in violation of the Board's rules or law. In

correspondence dated October 13, 2011, Respondent made the following statements to the Architects Board's Executive Director, Cynthia McKim:

I am a civil engineer, registered as a Professional Engineer with the Alabama Board of Licensure for Engineers and Land Surveyors. I have been in solo practice for over 30 years. I have primarily worked with small commercial design, commercial site, grading and drainage plans, storm water design, land use issues, Planning Commission and Board of Zoning Adjustment applications and residential structural design for high wind. I have become familiar with the International Building Codes through continuing education classes, regular study for particular projects and membership on the City of Mobile Codes Advisory Committees for adoption of the 2003 and 2009 Building Codes (two separate occasions). I have submitted plans for review and building permit to every jurisdiction within Mobile and Baldwin Counties. The engineering rules of professional conduct require me to act only in fields in which I am qualified by education and experience (330-X-14-.03) I believe I am qualified to interpret the International Building Code for small commercial projects, such as the Wemo Tot Spot day care ....

. . . I believe the simplicity of this 5500 sf, interior completion project was "incidental architecture", as allowed by Article 1, Section 34-11-1(7)(c) of the Alabama Engineering Law and Article 2, Section 34-2-32(d) of the Alabama Architecture Registration Act.

... I placed my engineering seal on the foundation plan (in coordination with the metal building supplier's loading and column locations), floor plan, exterior elevations (metal building with brick wainscot at front drive-thru) and foundation details. After I was contacted by Debbie Whitman of your office, I discussed with her the possibility of bringing Terry Beilharz into the project as remedial architect under your Chapter 100-X-5-.04 guidelines. Terry added a life safety plan, which I felt was obvious with the widely spaced, exit-marked and emergency-lighted three exits and short travel distances ....

. . . I believe my engineering seal, education and experience allow me to be the design professional for uncomplicated buildings greater than 2500 sf. If your Sections 100-X-4-.01 through 100-X-4-.09 always trump Section 100-X-4-.12, I would like to discuss the issue with you as soon as possible ....

Respondent contends that he has been penalized once for actions that constitute violations of architectural law and that he should not be penalized again under engineering law for the same infraction, particularly since there are no specific provisions under the Board's law or rules regarding the practice of incidental architecture.

#### **CONCLUSIONS OF LAW**

1. The Alabama Legislature has created the Alabama 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 §§ 34-11-2(b) and (c) (1975 as amended). The term "practice of engineering" "shall not include the practice of architecture except such architectural work as is incidental to the practice of professional engineering." ALA. CODE § 34-11-1 (?)c (1975 as amended). (2011).

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. In particular, Professional Engineers must act only in fields in which they are qualified by education or experience. ALA. ADMIN. CODE r. 330-X-14-.03 (2011). Consequently, the Board may take action against any licensee who engages in any other professional matter for which a specific license is required without first being licensed in that profession. ALA. ADMIN. CODE r. 330-X-14-.03(d) (2011).

3. On January 30, 2012, Respondent entered into a Settlement Agreement with the Alabama Board of Registration for Architects, in which he admitted that his actions with respect to the Wemo Tot Spot daycare facility in Mobile, Alabama, constituted violations of ALA. CODE §§ 34-2-30(2) and (3), 34-2-32(c) and 34-2-35(e) (1975 as amended) and ALA. ADMIN. CODE r. 110-X-4-.02 and -.04 (2011), "controlling the practice of architecture in the State of Alabama." ALA. CODE §§ 34-2-30(3) and 34-2-32(b) and (c) state as follows:

ALA. CODE§ 34-2-30(3) Practice of architecture. When an individual holds himself or herself out as able to render or when the person does render any service by consultations, investigations, evaluations, preliminary studies, plans, specifications, contract documents and a coordination of all factors concerning the design and observation of construction of buildings or any other service in connection with the design, observation or construction of buildings located within the boundaries of the state, regardless of whether such services are performed in connection with one or all of these duties, or whether they are performed in person or as the directing head of an office or organization performing them.

ALA. CODE § 34-2-32(b) No person shall be required to register as an architect in order to make plans and specifications for or administer the erection, enlargement, or alteration of any building upon any farm for the use of any

farmer, irrespective of the cost of such building, or any single family residence building or any utility works, structures, or building, provided that the person performing such architectural works is employed by an electric, gas, or telephone public utility regulated pursuant to the laws of Alabama or by a corporation affiliated with such utility, or of any other type building(s) which has a total area of less than 2,500 square feet provided it is not intended for use as a school, church, auditorium, or other building intended for the assembly occupancy of people.

ALA. CODE § 34-2-32(c) The services of a registered architect shall be required on all buildings except those hereinabove exempted and no official of this state or any city, town, or county herein charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings, shall accept or approve any plans or specifications that are not so prepared.

Likewise, ALA. ADMIN. CODE r. 100-X-4-.02 and -.04 provide:

ALA. ADMIN. CODE r. 100-X-4-.02. Buildings Over 2,500 Square Feet. Any building 2,500 square feet or larger that is erected, enlarged, or altered requires the services of a registered architect, other than those exempted as enumerated below.

ALA. ADMIN. CODE r. 100-X-4-.04. Buildings Intended for Education Occupancy. Any building erected, enlarged, or altered that is intended for use as an education facility (as classified by the building code adopted in the jurisdiction where the building is located) regardless of size requires the services of a registered architect.

In the case of metal buildings, ALA. ADMIN. CODE r. 100-X-4-.07 further states that "it is permissible for the plans for the 'shell' to be stamped by a licensed professional engineer; however, once occupancy type is established, the services of a registered architect are required for design of that building, if not otherwise exempted."

4. Respondent's Consent Order dated May 18, 2010, and approved by the Board on May 20, 2010, placed Respondent's PE license under a stayed suspension for four (4) years, beginning May 20, 2010 through May 20, 2014, for numerous violations of the acceptable standards of practice of engineering between 2006 and 2009, as provided under ALA. CODE § 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.05(g) and 330-X-14-.06(a) 1 and 5. The Consent Order also included the following provisions:

1. Respondent shall not in the future violate the provisions of Title 34, Chapter 11, Code of Alabama, 1975, or the Rules and Regulations of the Administrative Code and the Rules of Professional Conduct promulgated together.

...

10. Respondent agrees any violation of the terms of this Consent Order may result in the Board filing additional charges in accordance with Title 34, Chapter 11, Code of Alabama, 1975.

Respondent also entered into a previous Consent Order with the Board

5. In both his Settlement Agreement with the Architects Board and his testimony during this proceeding, Respondent admitted that his actions regarding the Wemo Tot Spot daycare facility violated the provisions of Alabama law under the jurisdiction of the Architects Board. Specifically, Respondent admitted that the Wemo Tot Spot facility was over 2,500 square feet in size and that it was classified for educational occupancy. ALA. CODE § 34-2-32(b) requires an architect to make plans and specifications for, or to administer the erection, enlargement, or alteration of, any building that is more than 2,500 square feet in size or that is intended for use as an educational facility. See also ALA. ADMIN. CODE r. 100-X-4-.02 and -.04. The Handbook for Building Officials cited by Respondent also includes a section regarding Exempt Structures at the front of the Handbook, which the undersigned finds instructive:

The Architects Registration Act provides limited instances where a person who is not registered as an architect may design and supervise the erection or alteration of a building. The following structures are exempt from the registration law requirements:

.. .4. Any other type building(s) with a total area less than 2,500 square feet and is not intended for assembly occupancy except schools, churches, auditoriums or other buildings intended for the assembly occupancy of people. (IMPORTANT NOTE: The Standard Building Code states that buildings less than 5,000 square feet do not require an architect. The State law overrules the building code in this regard).

6. The Board's regulations clearly state that it is a violation of the engineering Code of Ethics to engage in any other professional matter for which a specific license is required without first being licensed in that profession. ALA. ADMIN. CODE r. 330-X-14-.03(d) (2011). Any violation of the professional Code of Ethics also constitutes a violation of ALA. CODE § 34-11-11(a)(2) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a) 1. The reason is

clear- licensees who act outside of the boundaries of their profession endanger the health, safety and welfare of the public, as set forth in ALA. CODE § 34-11-2(b) (1975 as amended):

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering in this state is a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of the other learned professions in this state ....

7. While Respondent contends he is qualified by education and experience "to interpret the International Building Code for small commercial projects, such as the Wemo Tot Spot day care," and "to be the design professional for uncomplicated buildings greater than 2500 sf.", ALA. CODE § 34-2-32(b) and ALA. ADMIN. CODE r. 100-X-4-.02, -.04 and -.07 strictly mandate otherwise. As a prime example of the necessity for such rules, Respondent notes that Mr. Beilharz, the remedial architect later brought in to assist on the daycare facility, added a life safety plan, which Respondent felt was "obvious with the widely spaced, exit-marked and emergency lighted three exits and short travel distances."

8. The undersigned finds it particularly disturbing that this is the third occasion on which Respondent has been before this Board, each time for violations of its rules of practice. Further, based on his testimony in this proceeding, Respondent does not appear to understand that, in the view of the Board, his violation of another licensing board's rules and regulations directly impacts his ability to comply with his own professional standards, providing the rationale for the Board's adoption of ALA. ADMIN. CODE r. 330-X-14-.03(d) (2011). Absent further action by the Board, the undersigned concludes that Respondent's actions will endanger the health, safety and welfare of the very public Respondent is licensed to protect.

### **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. ALA. CODE § 34-11-1, et seq. (1975 as amended); ALA. ADMIN. CODE r. 330-X-1-.01, et seq. (2011).

2. Following his acceptance of the Consent Order by which his license was suspended in 2010, Respondent sealed plans for the Wemo Tot Spot daycare facility in Mobile, Alabama, in violation of the rules of the Alabama Board for Registration of Architects, which require a registered architect to make plans and specifications for, or to administer the erection, enlargement, or alteration of, any building that is more than 2,500 square feet in size or that is intended for use as an educational facility.

3. Respondent's Consent Order clearly provides that he understood the suspension of his license precluded him from violating the provisions of engineering law or the Board's rules and regulations and/or professional conduct during the time of his suspension. This Hearing Officer has concerns that, despite Respondent's repeated assertions that he did not intend to violate the provisions governing the practice of architecture, he has also failed to abide by the provisions governing the practice of engineering in 1998, under the terms of a previous Consent Order, which resulted in a two (2)-year suspension of his PE license with this Board, and on nineteen (19) separate occasions between June 29, 2006 and January 12, 2009, as reflected in his Consent Order of May 20, 2010. As correctly observed by the Architects Board, "[Respondent's] actions in this matter mirror other past actions for which he was disciplined."

4. 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) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.03(d) and -.06(a) 1 (2011).

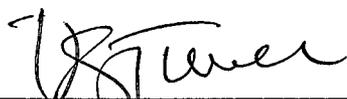
5. Accordingly, it is hereby recommended that Respondent's license to practice the profession of engineering in this state be REVOKED in accordance with the provisions of ALA. CODE § 34-11-11 (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2011), and that Respondent pay the cost to the Board for these proceedings, in accordance with ALA. CODE § 34-11-16(g) (1975 as amended) and ALA. ADMIN. CODE r. 330-X-16-.06(1) (2011), within thirty (30) days of the date of a Final Order issued by the Board.

**ORDER**

**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 him and hereby **ORDERS** as follows:

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 \$2,007.50 (two thousand seven dollars and fifty cents) for cost of hearing within thirty (30) days of date of Final Order.

Done this the 31<sup>st</sup> day of January, 2013



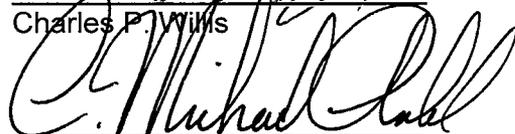
Daniel S. Turner



Earl R. Foust



Charles P. Willis



C. Michael Arnold



Phillip E. Santora

**ABSTAINED**

Marc S. Barter

**RECUSED**

W. Gerald Wilbanks