

RECEIVED

AUG 17 2015

RECEIVED

AUG 05 2015

**BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS**

IN RE: BARRY LEVIN & ASSOCIATES, INC.

C2016-03

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Barry Levin & Associates, Inc., (hereinafter "Respondent Firm"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent Levin is a licensed professional engineer in almost all of the fifty states, including his home state of Georgia, and is the owner of Respondent Firm, which is organized under the laws of the State of Georgia.
3. Respondent Firm had a Certification of Authorization (COA) to offer engineering services or practice engineering in West Virginia, but the COA was not renewed and lapsed on June 30, 2003.
4. This Complaint relates to Respondent Firm's preparation of structural drawings for a retail food establishment which were included in a permit application submitted to the City of Martinsburg without Respondent Firm having the COA required by West Virginia engineering law.

5. After being contacted by the Board, Respondent Firm submitted an application for the reinstatement of its COA, and COA# C01458 was reinstated on July 10, 2015.
6. The Board initiated complaint number C2016-03 at its regular meeting on July 14, 2015, which was filed and served on July 17, 2015.
7. Respondent Firm, through its Owner, admitted the allegations and initiated settlement negotiations in lieu of filing a response to the Complaint.
8. Respondent Firm admits that it offered and provided engineering services in West Virginia without a COA.
9. The Board has taken into account the following factors in reaching this settlement: Respondent Firm's prompt communication to this Board and cooperation in the resolution of this Complaint; and the nature of the violation, which did not pose harm to the public since the Owner was licensed at the time the engineering services were offered and provided in West Virginia.
10. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs and administrative costs were incurred in the investigation, initiation and resolution of this complaint.

CONCLUSIONS OF LAW

11. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code § 30-13-1 et seq.
12. Barry Levin, as an owner of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

13. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. W. Va. Code § 30-13-17.
14. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code § 30-13-21(a)(4).
15. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to firms. W. Va. Code § 30-13-21(d).
16. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board." W. Va. Code § 30-13-21(b); see also W. Va. Code § 30-13-21(d)(4).
17. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-3(e), without a valid Certificate of Authorization is an action that may subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. § 7-1-15.1.
18. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
19. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code § 30-13-21(d)(4) and W. Va. Code R § 7-1-14.4.

CONSENT OF RESPONDENT

Respondent Barry Levin, as the Owner of Barry Levin & Associates, Inc., by affixing his signature hereon, agrees to the following:

20. Respondent Firm is aware of its right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures, including its right to a formal hearing before the Board, and Respondent Firm intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
21. Respondent Firm admits that it did not have a Certificate of Authorization at the time it offered engineering services and practiced engineering in West Virginia, in violation of West Virginia engineering law.
22. Respondent Firm accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
23. Respondent Firm acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2016-03. This paragraph is binding on Respondent Firm even in the event that the Board does not approve this Consent Order.
24. Respondent acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent Firm authorizes the Board to review and examine all investigative file materials concerning Respondent Firm's activities in West Virginia in consideration of this Consent Order.

25. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on Respondent Firm even if the Board does not approve this Consent Order.
26. Respondent Firm acknowledges that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
27. Respondent Firm understands that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondent Firm which may be before this Board.
28. Respondent Firm understands that the complaint and this Consent Order are public records which, together with other public documents in the file, must be made available upon legal request in accordance with the State's Freedom of Information Act.
29. Respondent Firm agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
30. Respondent Firm acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary

revocation of any certification issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from Respondent Firm's non-compliance with this Consent Order.

31. Respondent Firm acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any certification issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2016-03 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) for offering to practice engineering in West Virginia without a certificate of authorization.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering in West Virginia without a certificate of authorization.
4. The civil penalties imposed herein totaling Five Hundred Dollars (\$500.00) must be paid within thirty (30) days of the date of entry set forth below, such amount to be made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.

5. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
6. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
7. If the civil penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$500.00), together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.
8. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.
9. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent Firm which may come before this Board.

10. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:




BARRY LEVIN as Owner of
BARRY LEVIN & ASSOCIATES, INC.

08/03/15
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 14th day of August, 2015.

**WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS**

By: 

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT