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

IN RE: JON T. CHU
CHU & GASSMAN CONSULTING ENGINEERS, PC

C2015-09

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND BOARD ORDER**

Came the Complainant, the West Virginia Board of Registration for Professional Engineers (hereinafter "WV PE Board" or "Board") by its Counsel, Debra L. Hamilton, Deputy Attorney General, for hearing in the above-styled complaint noticed for and held on November 10, 2015, in the Board Room of the Falcon Center at Fairmont State University, 1201 Locust Avenue, Fairmont, West Virginia. Respondents (hereinafter at times "Respondent Chu" and "Respondent Firm") did not appear and did not communicate with the Board regarding their failure to appear. The Hearing Panel was comprised of President Edward L. Robinson presiding, Board members Richard E. Plymale and Leonard J. Timms present, and Board member William E. Pierson by telephone.

The Presiding Officer found that Respondents' non-appearance was without good cause and ruled that the hearing would proceed as noticed pursuant to W. Va. Code § 30-13-22(c) and W. Va. Code R. §§ 7-2-2.5 and 7-2-4.3(a)(4). Despite the provision in the procedural rules of the Board that the failure to file a response to a complaint shall be deemed an admission of the factual allegations contained therein (W. Va. Code R. § 7-2-2.5), the Board then proceeded to hearing and made a record on the Complaint to determine the validity of the charges.

FINDINGS OF FACT

After a full and complete review of the hearing record, including the transcript of testimony and all exhibits admitted into evidence, weighing the evidence, and reviewing and modifying the Proposed Findings of Fact, Conclusions of Law and Recommended Order submitted by Counsel, the Board, including Bhajan S. Saluja, makes the following findings of fact:

1. Respondents were timely served with a Notice of Hearing and Statement of Charges, which was served in accordance with the procedural rules of the Board. Exhibit 1.
2. Respondent Chu was also notified of the date by email on October 7, 2015, and provided a second copy of the Notice of Hearing and Statement of Charges via email dated October 20, 2015. Exhibit 2.
3. Respondent Chu is a licensed professional engineer in several states, including his home state of New Jersey, but has never been licensed to offer engineering services or practice engineering in West Virginia. Exhibit 4.
4. Respondent Chu is the President of Respondent Firm, which did not qualify for the Certificate of Authorization (COA) required to offer engineering services or practice engineering in West Virginia since there was no professional engineer licensed in West Virginia who could be named as Respondent Firm's engineer-in-responsible-charge. Transcript of November 10, 2015 Hearing at 10-11 (hereinafter "TR. at ___").
5. Respondent Chu applied for licensure by comity on August 16, 2012. Exhibit 4.
6. This matter came to the Investigator's attention upon receipt of an email from the Board Administrator. Exhibit 3; TR. at 9-10.
7. Respondent Chu's comity application was approved on April 2, 2013, but the licensure process was never completed despite seven (7) notices regarding his failure to complete the process. Exhibit 3; TR. at 10.

8. Upon receipt of the 7th emailed notice, Respondent informed the Board “we failed to get the engineering design job in West Virginia” and, therefore, the WV PE license was no longer needed. Exhibit 5; TR. at 10.
9. Respondent Chu never completed his licensure in West Virginia. TR. at 10.
10. After further inquiry by the Board’s investigator (Exhibit 5, TR. at 11), the Board initiated complaint number C2015-09 at its regular meeting on March 24, 2015, which was filed and served on April 8, 2015. Exhibit 6; TR. at 12.
11. As set forth in the Board Initiated Complaint and the Notice of Hearing and Statement of Charges, Respondents’ practice of engineering in West Virginia and two offers of such work without the required credentials were for the Felman Ferroalloy Facility (“Felman”) located in the State. Exhibit 1, Exhibit 6; TR. at 12-13.
12. Respondent never filed a timely response to the Board although he informally communicated with the Board upon receipt of the Complaint through an email to counsel dated April 13, 2015. Exhibits 7 and 10; TR. at 13, 21-22.
13. As a result of Respondent’s communications with counsel and the Board’s investigator, as well as the Board’s communications with non-parties, it was learned that Respondents were introduced to the work by the President of LAN Associates, a Florida engineering firm which held a Certificate of Authorization (COA) in West Virginia [“LAN”]. Exhibits 8, 10 and 14.
14. Despite Respondents’ contention that Respondents were sub-consultants for LAN (Exhibit 7), the evidence shows that, while LAN made the introductions between Respondents and Felman, Respondents’ purchase order was directly with Felman, Respondents and LAN separately provided services to Felman on this project, and Respondents were not working under a sub-contract with LAN. Exhibit 14; TR. at 20.

15. Respondents' work for Felman was set forth in an engineering fee proposal dated January 9, 2012 ("Offer No. 1" / Exhibit 12), followed by the practice of engineering in West Virginia resulting in a ventilation report (Exhibit 9), which report constituted a second offer of engineering work ("Offer No. 2"), all without licensure. TR. at 15-19, 23.
16. Offer No. 1, which was accepted by Felman, involved a site visit, which occurred in early January 2011. Exhibit 9; TR. at 16.
17. Respondent should have been licensed prior to the making Offer No. 1, but did not even apply for licensure until August 16, 2012. Exhibit 4; TR. at 16.
18. Respondents' practice of engineering in West Virginia is set forth, in part, in the ventilation report dated January 24, 2012. Exhibit 9; TR. at 15.
19. Respondents were paid over \$20,000 in connection with the work performed in the preparation of the ventilation report. Exhibits 12, 13; TR. at 19.
20. The ventilation report prepared by Respondents for Felman (Offer No. 2) was primarily for the purpose of providing a cost estimate for a larger project, which ultimately was not awarded to Respondents. Exhibits 3, 7 and 9.
21. The Board finds by a preponderance of the evidence that Respondents have violated West Virginia Engineering Law in two instances of offering to practice engineering without the required license or certificate of authorization and one instance of practice engineering without the required license or certificate of authorization.
22. The Board was not initially successful in getting a copy of certain documents, including the fee proposal (Offer No. 1), until several requests were made by the Board counsel and investigator, and Respondents were otherwise unresponsive in providing timely information requested by the Board. Exhibits 7 and 10, 11; TR. at 17, 22.

23. Respondents did not communicate promptly with the Board in connection with their attempts to obtain the credentials necessary to practice engineering in West Virginia. Exhibits 4 and 5.
24. Respondents, especially through their failure to respond to the Complaint or appear for hearing, were uncooperative in the investigation and prosecution of this complaint.
25. Respondents' non-cooperation in this matter was a factor the Board considered in assessing the civil penalties set forth in the Order below, resulting in an increase in the civil penalties.
26. The economic benefit received by Respondents as a result of the violation, as well as consideration as to an amount that would be a substantial economic deterrent to such violations, were other factors considered by the Board in assessing the civil penalties set forth in the Order below.
27. Respondents' unlicensed practice did not pose harm to the public since no engineering services were performed by Respondents beyond the site visit and work that resulted in Offer No. 2, and this was also a factor the Board considered in assessing the civil penalties set forth in the Order below.
28. The Board incurred administrative costs in connection with the investigation, initiation and resolution of this Complaint in excess of Five Thousand Dollars (\$5,000.00).

CREDIBILITY OF WITNESSES

Aaron Armstrong was the only witness offering sworn testimony. As the Board's investigator since September 2013, Mr. Armstrong is considered an expert in the enforcement of West Virginia engineering law and provided credible testimony that Respondents had violated West Virginia engineering law as set forth in the Complaint and Statement of Charges.

DISCUSSION

West Virginia Engineering Law is comprised of the enabling article, W. Va. Code § 30-13-1 et seq., and the rules promulgated by the Board, which include W. Va. Code R. § 7-1-1 et seq., governing examination, licensure and practice, and W. Va. Code R. § 7-2-1 et seq., the Board's procedural rules. In this matter, the Board has gone above and beyond the various procedures set forth in West Virginia Engineering Law to hear and adjudicate this Complaint (§ 30-13-22 and W. Va. Code R. § 7-2-1 et seq.). The Board has the burden of proving by a preponderance of the evidence that disciplinary action is warranted. W. Va. Code R. § 7-2-4.4.

Respondents acknowledged or admitted many of the salient allegations in the Complaint in their communications with the Board through its investigator and counsel during the pendency of this Complaint. The evidence, and reasonable inferences drawn from that evidence, prove beyond a preponderance of the evidence that Respondents twice offered to practice engineering in West Virginia, and, pursuant to the Offer No. 1 which was accepted, practiced engineering in order to prepare Offer No. 2, which was not accepted by Felman.

CONCLUSIONS OF LAW

29. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and this matter is within the jurisdiction of the Board. W. Va. Code § 30-13-1 et seq.
30. The failure to file a response to a complaint shall be deemed an admission of the factual allegations contained therein. W. Va. Code R. § 7-2-2.5.
31. If the person or firm fails or refuses to appear, the Board may proceed to hear the complaint and determine the validity of the charges. W. Va. Code § 30-13-22(c).

32. Failure of the respondent to appear, without cause, shall not result in delay or postponement of the hearing. W. Va. Code R. § 7-2-4.3(a)(4).
33. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-3(e), in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.
34. Respondent Chu practiced engineering in connection with Offer No. 1, which resulted in the Report that was Offer No. 2, and therefore there are three separate offenses of practicing or offering to practice engineering without a license.
35. 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.
36. Respondent Firm practiced engineering in connection with Offer No. 1, which resulted in the Report that was Offer No. 2, and therefore there are three separate offenses of practicing or offering to practice engineering without a COA.
37. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration of, 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).
38. The provisions of W. Va. Code W. Va. Code § 30-13-21(a) are applicable as appropriate to unlicensed persons and firms. W. Va. Code § 30-13-21(b) and (d).
39. 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).

40. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-3(e), without a license is an action that may subject a person 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.
41. 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.
42. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the amount that will be a substantial economic deterrent to the violation; the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the history of previous violations; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; the economic benefit by the violator as a result of the non-compliance; the interest of the public; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
43. 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.

ORDER

1. On the basis of the foregoing, and upon entry of this Board Order, the Board **ORDERS** the following disciplinary action pursuant to West Virginia Code § 30-13-21.
2. The Board **ORDERS** Respondent Chu to pay the following civil penalties, for a total of One Thousand One Hundred Fifty Dollars (\$1,150.00):
 - a. a civil penalty for the first offense of offering to practice engineering in West Virginia without a license in the amount of Three Hundred Fifty Dollars (\$350.00);

- b. a civil penalty for the second offense of offering to practice engineering in West Virginia without a license in the amount of Four Hundred Fifty Dollars (\$450.00); and
 - c. a civil penalty for the offense of practicing engineering in West Virginia without a license in the amount of Three Hundred Fifty Dollars (\$350.00).
3. The Board **ORDERS** Respondent Firm to pay the following civil penalties, for a total of One Thousand One Hundred Fifty Dollars (\$1,150.00):
 - a. a civil penalty for the first offense of offering to practice engineering in West Virginia without a certificate of authorization in the amount of Three Hundred Fifty Dollars (\$350.00);
 - b. to pay a civil penalty for the second offense of offering to practice engineering in West Virginia without a certificate of authorization in the amount of Four Hundred Fifty Dollars (\$450.00); and
 - c. to pay a civil penalty for the first offense of practicing engineering in West Virginia without a certificate of authorization in the amount of Three Hundred Fifty Dollars (\$350.00).
4. The Board **ORDERS** Respondents to pay administrative costs in the amount of Four Thousand Five Hundred Dollars (\$4,500.00) in connection with Complaint number C2015-09.
5. The civil penalties imposed herein totaling Two Thousand Three Hundred Dollars (\$2,300.00) shall be paid within fifty (50) 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.
6. The administrative costs imposed herein in the total amount of Four Thousand Five Hundred Dollars (\$4,500.00) shall be paid by separate payment within fifty (50) days from the date of entry, such amount to be made payable to the W. Va. P.E. Board.
7. 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

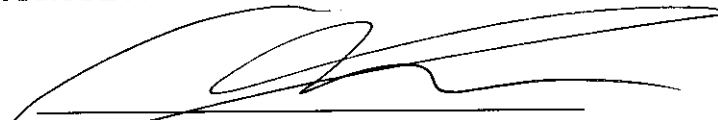
National Council of Examiners for Engineering and Surveying (NCEES) and the licensing board of Respondent Chu's original licensure.

8. The Board shall send a copy of this Board Order to Respondent's licensing agency in the State of New Jersey and may notify any other licensing boards in which Respondent is currently an active licensee.
9. Non-compliance with this Board Order shall be immediate cause for further action by the Board.

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 3rd day of February, 2016.

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

By:


**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**