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

WV PE BOARD

IN RE: FRANKLIN S. PAJARO, PE

C2017-22

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 the Board-initiated Complaint which, as filed, was against Franklin S. Pajaro in both his individual capacity ("Mr. Pajaro") and on behalf of his firm ("Respondent Firm"). The Board hereby agrees to dismiss the charge against Mr. Pajaro individually and proceed solely against 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. Mr. Pajaro, P.E. License No. 14116, is the engineer-in-responsible-charge of Respondent Firm, which is organized under the laws of the State of North Carolina.
3. Mr. Pajaro had previously been licensed with this Board, and Respondent Firm had held prior Certificates of Authorization (COAs) issued by this Board, both of which had been lapsed for several years at the time of the matters which gave rise to this Complaint.
4. On August 14, 2015, Mr. Pajaro reinstated his license, but the Board did not receive an application for a sole proprietor Certificate of Authorization (COA) from Respondent Firm until February 14, 2017; COA C02728 was reinstated that same day.

5. On the COA application, Mr. Pajaro, on his own behalf and on behalf of Respondent Firm, answered ‘No’ to the questions whether he or Respondent Firm were currently practicing or offering to provide engineering services for projects in West Virginia.
6. Thereafter, based upon a call to the Board, the Board followed up on the veracity of these answers and learned that Mr. Pajaro and Respondent Firm had indeed worked on engineering projects in West Virginia.
7. The Board initiated Complaint Number C2017-22 at its regular meeting on March 21, 2017, to which Mr. Pajaro and Respondent Firm timely responded, admitting they had worked on two projects in West Virginia prior to obtaining a COA.
8. Respondent Firm admits it provided misinformation to the Board in its application for a COA.
9. The Board has taken into account the following factors in reaching this settlement: neither Mr. Pajaro or Respondent Firm reported the misinformation, and the Board only became aware of the work in West Virginia after a call from a third party; there was no risk of harm to the public given that Mr. Pajaro was licensed in West Virginia at the time of the work; and Respondent Firm cooperated in the resolution of this Complaint.
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. Mr. Pajaro, as 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 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. Providing false information to the Board is a basis for disciplinary action by the Board. W. Va. Code § 30-13-21(a)(12).
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) and W. Va. Code R. § 7-1-15.
17. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to firms. W. Va. Code § 30-13-21(d).
18. Practicing engineering, as defined by W. Va. Code § 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) for each offense. W. Va. Code R. § 7-1-15.1.
19. Providing misinformation to the Board may subject any person or firm to discipline by the Board, including a civil penalty up to Fifteen Thousand Dollars (\$15,000.00). W. Va. Code R. § 7-1-15.1.
20. 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.

21. 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 FIRM

Franklin S. Pajaro, as Owner of Franklin S. Pajaro, PE, and on its behalf, agrees to the following:

22. 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 notwithstanding, Respondent Firm intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
23. Respondent Firm admits it submitted a COA application which contained misinformation regarding engineering work in West Virginia.
24. 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.
25. Mr. Pajaro and Respondent Firm acknowledge 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 C2017-22. This paragraph is binding on Mr. Pajaro and Respondent Firm even in the event that the Board does not approve this Consent Order.
26. Should the Board not approve this Consent Order, Mr. Pajaro and Respondent Firm waive any objections to the Board or any of its members participating in the adjudication

of this matter based on the Board's consideration of this Consent Order. This paragraph is binding on Mr. Pajaro and Respondent Firm even if the Board does not approve this Consent Order.

27. 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 based on the complaint as filed.
28. 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, unrelated disciplinary matter involving Respondent Firm which may be before this Board.
29. Respondent Firm understands that this Complaint, documents submitted to the Board by Respondent Firm, and this Consent Order, together with other public documents which may be in the file, are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
30. 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 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).
31. 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 the certification issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from non-compliance with this Consent Order.

32. Respondent Firm acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of the 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 C2017-22 pursuant to W. Va. Code § 30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay total civil penalties in the amount of Seven Hundred Fifty Dollars (\$750.00) for the following violations:
 - a. A penalty of Two Hundred Fifty Dollars (\$250.00) for providing misinformation to the Board on its COA application; and
 - b. A penalty of Two Hundred Fifty Dollars (\$250.00) for each of the two projects in West Virginia performed prior to obtaining the required COA, for a sub-total of Five Hundred Dollars (\$500.00).
3. The civil penalties imposed herein totaling Seven Hundred Fifty Dollars (\$750.00) 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.

4. 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 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).
5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
6. If the civil penalties totaling Seven Hundred Fifty Dollars (\$750.00) 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, 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.
7. 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.
8. 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,

unrelated disciplinary matter involving Respondent Firm which may come before this Board.

9. 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:



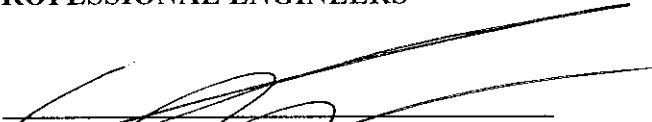
FRANKLIN S. PAJARO, P.E.
By Franklin S. Pajaro, Its Owner

7/27/17

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 4th day of August, 2017.

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

By: 

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT