

MAR 19 2018

WV PE BOARD

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

**IN RE: JONATHAN GARBER
 LINEAGE ARCHITECTS, P.C.**

C2018-06

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 against Lineage Architects, P.C. ("Respondent Firm") and Jonathan Garber ("Respondent") (collectively "Respondents"). 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 Firm is a corporation organized under the laws of the State of Virginia, with its principal place of business in Verona, Virginia. Respondent Firm has never held a Certification of Authorization (COA) to practice engineering in West Virginia, and does not qualify for the issuance of a COA in West Virginia.
3. Respondent Garber, in addition to being an owner and officer of Respondent Firm, is a licensed professional engineer in Virginia and applied for licensure in West Virginia on July 23, 2017.
4. Without the credentials to practice engineering in West Virginia, Respondents offered engineering services to Lantz Construction for the renovation of Pendleton Manor Nursing Home in Franklin, WV.
5. The Board initiated Complaint Number C2018-06 at its regular meeting on September 20, 2017, which was filed and served on September 26, 2017.

6. Respondents filed a timely response to the Board which did not contest that Respondents offered engineering services in West Virginia without a license or COA.
7. Upon further investigation, including review of the set of civil drawings and the response, the Board finds that, while the cover page to the set of drawings is signed by an architect licensed in this State, several of the included drawings, such as site plans, grading plans, the stormwater plan and profiles, and retaining wall details, constitute engineering work which should have been performed and signed by a licensed engineer.
8. Based on the drawings, the Board finds that Respondents also practiced engineering in West Virginia without a license or COA, and the complaint is herein amended to reflect this.
9. The Board has taken into account the following factors in reaching this settlement: no engineering work was performed in West Virginia; Respondents represent they will not offer or practice engineering in West Virginia until such time as the proper credentials for same have been issued by this Board; and Respondent Firm otherwise cooperated in the resolution of this Complaint.
10. The Board has incurred legal and other administrative costs in connection with Complaint Number C2018-06 in connection with the investigation, initiation and resolution of Complaint Number C2018-06, and it is within the Board's power to assess such costs, but, in its discretion, the Board will not assess administrative costs in the 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. Respondent Garber, as an owner and officer of Respondent Firm has the signature authority to bind Respondent Firm to this agreement.

13. 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.
14. 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.
15. For a COA to be issued and to remain valid there must be an engineer-in-responsible-charge who is a full-time employee, owner or principal of the firm. W. Va. Code § 30-13-17(d).
16. Respondent Firm has no professional engineers in West Virginia and therefore cannot qualify for a COA.
17. Failure to comply with any of the provisions of W. Va. Code § 30-13-1 *et seq.* or any of the rules promulgated under Article 13 is a basis for disciplinary action by the Board. W. Va. Code § 30-13-21(a)(4).
18. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to firms. W. Va. Code § 30-13-21(d).
19. Respondents offered and practiced engineering without the required license and COA, in violation of W. Va. Code § 30-13-21(a)(4).
20. 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.
21. Practicing engineering, as defined by W. Va. Code § 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.

22. 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). W. Va. Code R. § 7-1-15.1.
23. 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.
24. 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

Jonathan Garber, individually and as the authorized signatory to this agreement for Lineage Architects, P.C., agrees to the following:

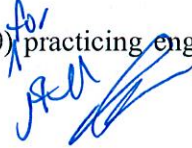
25. Respondents are aware of their right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
26. Respondent Garber admits that he did not have a license to practice engineering in the State of West Virginia at the time he offered same, in violation of West Virginia engineering law.
27. Respondent Firm admits that it offered engineering in West Virginia without a valid COA and further admits that it does not qualify for the issuance of the required COA.
28. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

29. Should the Board not approve this Consent Order, Respondents 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 Respondents even if the Board does not approve this Consent Order.
30. Respondents acknowledge 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.
31. Respondents understand 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 related or unrelated disciplinary matter involving Respondent Firm which may be before this Board.
32. Respondents understand 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.
33. Respondents agree 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").
34. Respondents acknowledge 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 license or certification which may be issued to Respondents by the Board, and the

addition of any other charges which may arise or ensue from non-compliance with this Consent Order.

35. Respondents acknowledge 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 any license or certification issued to Respondents 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 C2018-06 pursuant to W. Va. Code § 30-13-22(b).
2. The Board **REPRIMANDS** Respondents for offering engineering services in West Virginia without the credentials required by law.
3. The Board **ORDERS** Respondent Garber 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 license.
4. The Board **ORDERS** Respondent Garber to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00)  practicing engineering in West Virginia without a license.
5. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for offering to practice engineering in West Virginia without a certificate of authorization.

6. 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.
7. The Board **ORDERS** that Respondents be prohibited from advertising or otherwise offering engineering services or practicing engineering in West Virginia unless and until they qualify for and are issued the license and Certificate of Authorization required by this Board, although nothing herein shall prohibit a licensee other than Respondent Garber from obtaining the license necessary for Respondent Firm to qualify for the required COA.
8. 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).
9. Any violation of the terms of this Consent Order shall be immediate cause for rescission of this Consent Order, reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondents by the Board, and further disciplinary action by the Board.
10. If the civil penalties totaling One Thousand Dollars (\$1,000.00) 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.
11. 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.

12. 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 related or unrelated disciplinary matter involving Respondents which may come before this Board.
13. 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:



JONATHAN GARBER, Individually
and on behalf of LINEAGE ARCHITECTS, P.C.

3/13/18

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 20th day of March, 2018.

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

By: 

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT