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WV REGISTRATION BOARD

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

IN RE: EIPEL BARBIERI MARSCHHAUSEN, LLP

C2007-22

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president, and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia (hereinafter "the Board") for the purpose of agreeing to disciplinary action to be taken against Eipel Barbieri Marschhausen LLP [hereinafter at times referred to as Respondent]. 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 Board is a state entity created by West Virginia Code §30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to West Virginia Code §30-13-1 *et seq.*
2. Eipel Barbieri Marschhausen LLP is a corporation organized under the laws of the State of New York with its principal offices in New York City.
3. The Board-initiated complaint charges Respondent with two violations: practicing without a certificate of authorization (COA) and issuing final bid drawings which were unsealed, in violation of 7 CSR 10-7.3(a).
4. Respondent has held COA #C2034-00 since June of 2003, but allowed the COA to lapse during the July 04 – June 05 renewal period, reinstating same in June 2005 and again allowing it to lapse upon its expiration in June of 2006.
5. This board-initiated Complaint is based on unsealed bid drawings for a retail storefront dated March 30, 2007, during which time Respondent did not have a

valid COA.

6. Frederick Barbieri is a named partner in Eipel Barbieri Marschhausen LLP and has the power and authority to make admissions and otherwise act on behalf of Respondent.
7. Mr. Barbieri holds West Virginia P.E. license number 014950 and has been licensed and in good standing since 2001.
8. Mr. Barbieri was the engineer who performed the work that was the basis of this Complaint but the Board, in its discretion, did not proceed against Mr. Barbieri personally.
9. Respondent admits it provided engineering services in the State of West Virginia at a time in which it did not hold a valid COA and that Mr. Barbieri submitted unsealed bid drawings as part of that engineering service.
10. Respondent's cooperation with the Board in this matter, and the fact that the work was done by an engineer licensed in West Virginia, mitigates Respondent's culpability regarding its admitted violations of West Virginia engineering law.
11. Based on the foregoing, the Board, in its discretion, will not assess administrative costs against Respondent and will not assess a civil penalty for the issuance of unsealed drawings, although the Board finds it is within its power to assess such costs and civil penalty.
12. Respondent has waived its right to a hearing on this matter and other rights set forth in W. Va. Code §30-13-1 *et seq.* and the procedural rules of the Board.

CONCLUSIONS OF LAW

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. West Virginia Code §30-13-17.

14. West Virginia engineering law requires that a registrant's seal and signature appear on the first or title page of all final documents presented to a client, and bid drawings are among the types of final documents which must be sealed when prepared by a professional engineer. 7 CSR 1-7.3(a).
15. 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." West Virginia Code §30-13-21(b); *see also* W. Va. Code §30-13-21(d)(4).
16. Practicing or offering to practice engineering without a valid COA, to which Respondent has admitted herein, is an action that could subject a firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 CSR 1.15.1.
17. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.

CONSENT OF RESPONDENT

Frederick Barbieri, a named partner in Eipel Barbieri Marschhausen LLP, by affixing his signature hereon, agrees to the following on behalf of Eipel Barbieri Marschhausen LLP:

18. Respondent is aware of its right to be represented by counsel and of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives its right to do so.
19. Respondent intelligently and voluntarily waives its right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.

20. Respondent admits it practiced engineering in West Virginia without the required certificate of authorization and that it submitted unsealed final bid drawings, both in violation of West Virginia engineering law.
21. Respondent 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.
22. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
23. Respondent acknowledges that proof of any 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 certificate of authorization issued to Respondent, 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.
24. Respondent acknowledges that even *offering* to practice engineering in this State without a valid COA is a violation of West Virginia engineering law and that this disciplinary action will be deemed to exacerbate any future disciplinary action taken by this Board against this Respondent.

ORDER

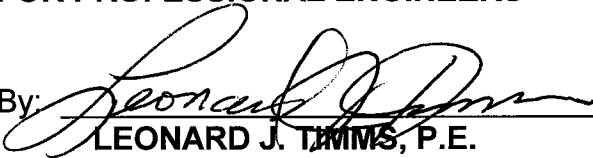
25. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code §30-13-22(b).

26. The Board **REPRIMANDS** Respondent for presenting final bid drawings to its client without the seal required by West Virginia engineering law.
27. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering without a certificate of authorization.
28. The civil penalty imposed herein must be paid within thirty (30) days of the date Respondent receives notice of the Board President's signature hereon, 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.
29. Respondent will not practice or offer to practice engineering in the State of West Virginia unless and until it holds a valid Certificate of Authorization issued by this Board, which COA shall not issue until Respondent has paid the civil penalty imposed herein.
30. Respondent acknowledges this Consent Order and the underlying Complaint are public records and agrees that the sum and substance of the Complaint and this agreement in part or in their entirety may 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. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
32. 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 action except an action to enforce the terms of this Consent Order.
33. If the civil penalty imposed herein is not timely paid, this Consent Order may be

summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$250.00), 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.

34. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein.
35. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers 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.

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

By: 
LEONARD J. TIMMS, P.E.
Board President

Date: 6/19/07


EIPEL BARBIERI MARSCHHAUSEN, LLP
By FREDERICK BARBIERI, A Partner

Date: 6/12/07