

BEFORE THE WEST VIRGINIA STATE BOARD  
OF REGISTRATION FOR PROFESSIONAL ENGINEERS

RECEIVED

MAR 14 2014

WV PE BOARD

IN RE: SAMUEL A. WOOD

C2013-03

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "Board") by Edward L. Robinson, P.E., its President, and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action to be taken against Samuel A. Wood (hereinafter "Respondent"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of the above-referenced 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 is a licensed professional engineer ("P.E.") in the State of West Virginia, holding license number 11362.
3. Respondent is the owner and president of Advantage Home & Environment Inspections, Inc. [hereinafter at times "Advantage Home" or "Respondent's company"], which is an engineering firm with a certification of authorization (C02221), but was not named as a Respondent to this complaint.

4. Respondent is the only professional engineer employed by Advantage Home, although he from time to time has employees who hold engineering degrees.
5. On September 25, 2012, a third-party complaint was filed with the Board with several allegations that Respondent had violated West Virginia engineering law. These alleged violations, set forth on information and belief, are summarized as follows:
  - a. That Respondent affixed his professional engineering seal to home inspection reports which he did not prepare or check, nor were they completed under his direct supervision and control.
  - b. The wrongful affixing of his seal to home inspection reports was a regular business practice "of a character that misleads and defrauds the public, associated real estate professionals and lenders by giving the appearance that the reports were prepared or checked or completed under the direct supervision or control of" Respondent since there is no indication as to which portions of a report, if any, were inspected under Respondent's direct control.
  - c. Respondent deceived and defrauded the public by promoting Advantage Home on his website and by other means, including radio broadcasts, as having multiple engineers such that every home inspection was a structural inspection.
  - d. Respondent applies his professional seal to the entire home inspection report, which includes electrical systems, heating/cooling systems, and plumbing systems, which areas are outside Respondent's area of expertise.
6. In a timely response by counsel, Respondent specifically denied the allegations and stated that from 1995 until June 27, 2008 [revised in sworn testimony to May 27,

2008] his home inspection reports were generated with no seal, but because of a communication with Board staff in February of 2008 he understood that the reports had to be sealed since Advantage Home is an engineering firm.

7. The exact dates are not important since there are home inspections prior to 2008 which bear Respondent's seal, but the Board finds that Respondent misunderstood the comment of Board staff or Board staff did not understand the question or there was some other miscommunication if Respondent understood that each and every final document generated by an engineering firm had to be sealed by a professional engineer regardless of whether it contained engineering.
8. Respondent included "General Observations" in his response regarding the source of the Third-Party complaint who is married to the executive director of the Board and the owner of a home inspection business in direct competition with Respondent.
9. The Board finds a good faith basis for the Third-Party Complaint, especially inasmuch as licensees are required under the Rules of Professional Responsibility to provide information and assistance to the Board if they have knowledge of possible violations of those rules.
10. The Board's executive director was excused from and did not participate in any investigation, discussion, or action on this Complaint, and her relationship to the Complainant had no influence or bearing on the disciplinary action agreed to herein.
11. Respondent admits that from July 1, 2008 through June 30, 2012 (Fiscal Years 2009 through 2012), an average of at least 300 home inspection reports per fiscal year were sealed with Respondent's seal by his employees, some of whom were not engineers and none of whom were professional engineers at the time the reports were sealed,

and that Respondent did not directly supervise and verify the work, in violation of West Virginia engineering law.

12. Respondent admits that the hundreds of home inspection reports performed during Fiscal Year 2013 (July 1, 2012 – June 30, 2013) to date bear his seal, even though he did not directly supervise and verify the work.
13. Respondent admits that to date he has not changed his representations regarding an engineer's involvement in "every" Advantage Home home inspection.
14. Respondent acknowledges that West Virginia engineering law requires work of an employee who is not a professional engineer be directly supervised and verified.
15. Respondent acknowledges that he is responsible for the use of his seal and admits that he allowed employees to affix his seal to home inspection reports which he did not directly supervise and verify, including reports he did not even see.
16. Respondent admits that, in his advertising and other public statements, he referred to his employees as "engineers" and did not distinguish between employees with engineering degrees and those with engineering technology degrees nor make clear that these employees were not professional engineers.
17. Upon review of materials provided with the Complaint and further investigation by the Board, the Board makes the following findings with regard to the allegations summarized above:
  - a. Every home inspection report issued by Respondent's company since June of 2008 bears Respondent's professional engineering seal, including hundreds of home inspection reports which he did not perform, supervise, check, control or verify to the extent required by West Virginia engineering law.

- b. The wrongful affixing of Respondent's seal to home inspection reports was a regular business practice of a character that had the potential to mislead or deceive the public, including clients, real estate professionals and lenders, by giving the appearance that the reports were sealed in accordance with West Virginia engineering law, including having been directly supervised and checked by Respondent when they were not.
  - c. Respondent's promotion of Advantage Home as having multiple engineers such that every home inspection was a structural inspection had the potential to mislead or deceive the public.
18. Upon review of materials provided with the Complaint and further investigation by the Board, the Board makes the following additional findings:
- a. Respondent's misrepresentation that every Advantage Home home inspection was a structural inspection conducted by an engineer or seen through the eyes of an engineer constitutes unfair competition, in violation of the professional engineers' rules of professional responsibility.
  - b. Respondent's misrepresentation that an employee with a degree in engineering technology is an engineer is a violation of Respondent's obligation to other professional engineers, as set forth in the professional engineers' rules of professional responsibility.
19. No evidence was provided nor has any come to the attention of this Board regarding the following allegations, and therefore the Board makes no findings regarding same:
- a. That Respondent practiced engineering outside his area of expertise;
  - b. That Respondent intended to mislead, deceive or defraud the public; or

- c. That any member of the public was actually misled, deceived or defrauded by Respondent.

20. The Board has taken the following factors into consideration in determining the appropriate discipline to be agreed to herein:

- a. the circumstances leading to the violation;
- b. the interest of and risk of harm to the public which, while the Board finds that Respondent's conduct had the potential for misleading or deceiving the public, found no evidence of actual harm to the public;
- c. the amount of civil penalty that will be a substantial economic deterrent to future violations; and
- d. the extent to which Respondent cooperated with the Board in the resolution of this matter.

21. The following documented event was considered by the Board in exacerbation of the Complaint:

- a. In April of 2008, Respondent sent a letter to the Board in connection with a complaint against his firm and one of his employees (C2008-12) which, in part, resulted in the dismissal of the complaint (*see Attachment A, which is incorporated by reference*);
- b. The complaint related to a home inspection report issued by the unlicensed employee which included an engineering recommendation but was not signed and sealed by a professional engineer;
- c. The dismissal letter issued by the Board on August 15, 2008, stated that the Board "accepted as true" Respondent's representation that Advantage Home

had procedures in place for signing and stamping reports that met the requirements of West Virginia engineering law, with no mention of Respondent's practice to seal every home inspection report, regardless of whether it contained engineering work (*see* Attachment B, which is incorporated by reference); and

- d. Neither Respondent nor anyone at Respondent's company contacted the Board for further explanation or clarification regarding the signing and sealing of home inspection reports.

22. The following circumstances were considered by the Board in further exacerbation of the Complaint:

- a. In Respondent's correspondence to the Board in April of 2008 (Attachment A), he referenced that, as a member of the Board of Directors of the West Virginia Association of Home Inspectors, he worked with the Board to establish guidelines which were published in a letter generated by the Board.
- b. That document, dated August 23, 2007, signed by the President of this Board, the State Fire Marshal and the President of the WV Association of Home Inspectors sets forth in Item 1 that, although home inspectors may suggest repairs to be made based upon the findings of the home inspection, "(i)t is agreed by all concerned parties that structural engineering inspections, assessments and design recommendations must be done by properly licensed West Virginia Professional Engineers experienced in that field." (*See* Attachment C, which is incorporated by reference.)

- c. The August 23, 2007, document attempts to make clear that a home inspection report must be signed by a Professional Engineer only when the home inspection contains engineering and also provides some examples of aspects of home inspections which must be performed by a Professional Engineer.
  - d. Respondent's representation, made on radio broadcasts, on his website and elsewhere, that he is a Professional Engineer and that every home inspection performed by Advantage Home is a structural inspection performed at no extra fee does not conform with the guidelines which Respondent worked to establish.
23. The Board has incurred administrative costs in the amount of more than Six Thousand Dollars (\$6,000.00) in the investigation and prosecution of this Complaint.

### **CONCLUSIONS OF LAW**

24. 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 in the State of West Virginia.
25. The Board, in its discretion, is authorized to take disciplinary action against any person found to be in violation of West Virginia engineering law and may suspend or revoke or refuse to issue, restore or renew a license or impose a civil penalty upon any licensee who has been found to violate one or more provisions of West Virginia engineering law. W. Va. Code § 30-13-21(a).



26. Disciplinary action may be taken against any licensee who has "[b]een negligent, incompetent or committed an act of misconduct in the practice of engineering." W. Va. Code § 30-13-21(a)(2).
27. Disciplinary action may be taken against any licensee who has "[f]ailed 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).
28. Disciplinary action may be taken against any licensee who has "[s]igned or affixed the professional engineer's seal or permitted the professional engineer's seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents or calculations or revisions which have not been prepared or completely checked by the professional engineer or under the professional engineer's direct supervision or control." W. Va. Code § 30-13-21(a)(10); W. Va. Code R § 7-1-7.3(a).
29. Disciplinary action may be taken against any licensee who has "[e]ngaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public." W. Va. Code § 30-13-21(a)(11).
30. The Rules of Professional Responsibility, and specifically the Rules related to Respondent's Obligation to Employers and Clients, state that licensees "shall not affix their signatures or seals to any plans or documents except in accordance with" West Virginia engineering law. W. Va. Code R § 7-1-12.4(b).
31. Work of any employee cannot include final engineering designs or decisions and must be done under the direct supervision of and verified by a professional

engineering or other person lawfully practicing engineering. W. Va. Code § 30-13-24(c).

32. Registrants shall avoid conflicts of interest and faithfully serve the legitimate interests of their employers, clients, and customers within the limits defined by this rule. Their professional reputation shall be built on the merit of their services, and they shall not compete unfairly with others. W. Va. Code R § 7-1-12.2(d).
33. Licensees "having knowledge of possible violations of any of the Rules of Professional Responsibility shall provide the Board with information and assistance necessary to the final determination of the violation." W. Va. Code R § 7-1-12.3(h).
34. Licensees "shall not falsify or permit misrepresentation of their, or their associates' academic or professional qualifications ... Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments. W. Va. Code R § 7-1-12.5.
35. The Board is authorized to assess civil penalties against any person who violates any provisions of this article or any rule promulgated by this 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).
36. Misuse of a West Virginia professional engineer seal is an action that could subject Respondent to discipline by the Board, including a civil penalty up to \$5,000.00 for each offense. W. Va. Code R. § 7-1-15.1.

37. A violation of the Rules of Professional Responsibility is an action that could subject Respondent to discipline by the Board, including a civil penalty up to \$5,000.00 for each offense. W. Va. Code R. § 7-1-15.1.

38. Illegal advertising of engineering services is an action that could subject Respondent to discipline by the Board, including a civil penalty up to \$5,000.00 for each offense. W. Va. Code R. § 7-1-15.1.

39. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as:

- (a) Whether the amount imposed will be a substantial economic deterrent to the violation;
- (b) The circumstances leading to the violation;
- (c) The nature and severity of the violation and the risk of harm to the public;
- (d) The history of previous violations;
- (e) The extent to which the cited person or firm has cooperated with the Board and the Board's investigation;
- (f) The economic benefits gained by the violator as a result of the noncompliance;
- (g) The interest of the public; and
- (h) Other matters as may be appropriate.

W. Va. Code R. § 7-1-15.4.

40. The Board, in its discretion, may assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity who violates any provision of West Virginia engineering law, which costs shall be paid to the West Virginia State Board of Registration for Professional Engineers by check or money order within a period of thirty (30) days from the date of the order entered by the Board. W. Va. Code R § 7-1-14.4.

### **CONSENT OF RESPONDENT**

Samuel A. Wood, individually, by affixing his signature hereon, agrees to the following:

41. Respondent is represented by counsel and is aware of his option to pursue this matter through appropriate administrative and/or court procedures and intelligently and voluntarily waives his right to do so.
42. Respondent admits to the offense of misuse of seal.
43. Respondent admits that Advantage Home's advertising and other public statements and the presence of his seal on every home inspection report prepared by Advantage Home, including reports that he neither directly supervised, saw or verified, has the potential to mislead or deceive the public.
44. Respondent admits that representations that an employee with a degree in engineering technology is an engineer is a misrepresentation of that employee's academic qualifications, in violation of the rules of professional responsibility regarding his obligation to other professional engineers.
45. Respondent accepts that his representations that every home inspection performed by Advantage Home is a structural inspection performed by an engineer is a misrepresentation that constitutes unfair competition.
46. Respondent accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and without duress, restraint or compulsion.
47. 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.

48. Respondent 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 C2013-03. This paragraph is binding on Respondent even in the event that the Board does not approve this Consent Order.
49. This Consent Order is executed by Respondent for the purposes of avoiding further administrative action with respect to this Complaint. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning the Respondent prior to or in conjunction with consideration of this Consent Order.
50. Should the Consent Order not be accepted by the Board, it is agreed that presentation to and by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings and that any knowledge obtained by the Board shall not form the basis of any objection to any Board member serving on the hearing panel in the event this matter goes to hearing, any such objection being knowingly waived by Respondent. This paragraph is binding on Respondent even if the Board does not approve this Consent Order.
51. Respondent acknowledges that this Consent Order, the underlying Complaint, his response and deposition, and other written submissions are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
52. Respondent 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).

53. Upon acceptance by the Board, 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 by the Board to enforce the terms of this Consent Order, but 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 matter which may come to the attention of this Board involving Respondent, or an engineering or home inspection business for which Respondent is an owner, officer or principal.
54. Respondent 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 license or certification which may be issued to Respondent by the Board, and the addition of any other charges which may arise or ensue from Respondent's non-compliance with this Consent Order.
55. 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 Complaint C2013-03, the summary revocation of any license or certificate of authorization issued to the Respondent and Respondent's firm, 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.
56. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

## **ORDER**

1. 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).
2. The Board **ORDERS** Respondent to seal engineering documents only when his seal is affixed in accordance with West Virginia engineering law.
3. The Board **ORDERS** Respondent to meet his obligations to his clients, customers, and other professional engineers such that representations regarding his firm, employees, associates, or past accomplishments are not falsified or exaggerated and do not compete unfairly with others.
4. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) for the misuse of Respondent's seal.
5. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for violations of the code of professional responsibility admitted to herein.
6. The Board **ORDERS** Respondent to pay administrative costs in the discounted amount of Three Thousand Dollars (\$3,000.00).
7. The administrative costs agreed to herein must be paid within sixty (60) days from the date of the Board's entry of this Consent Order (evidenced by the date of the President's signature), may be made in installments of no less than One Thousand Dollars (\$1,000.00), and shall be made payable to the W. Va. P.E. Board.

8. The civil penalties agreed to herein in the total amount of Seven Thousand Dollars (\$7,000.00) must be paid by September 1, 2014, may be made in installments of no less than One Thousand Dollars (\$1,000.00), and shall be made payable to the W. Va. P.E. Board.
9. Payments for administrative costs must be paid separately from the payment for civil penalties, which shall be transferred to the general fund of the State of West Virginia upon receipt.
10. 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 NCEES.
11. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
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 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. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter which may come before this Board involving Respondent.
13. If the civil penalties and administrative costs agreed to herein are 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 unpaid amount of the total amount of payment agreed to herein of Ten Thousand Dollars (\$10,000.00), 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.

14. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties and administrative costs agreed to herein.
15. 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.

**[signature lines appear next page]**

AGREED TO BY:

  
\_\_\_\_\_  
SAMUEL A. WOOD  
*Respondent*

3-12-2014  
DATE

ENTERED into the records of the West Virginia State Board of Registration for  
Professional Engineers this 17<sup>th</sup> day of March, 2014.

WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS,

By:   
\_\_\_\_\_  
EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT

3/17/14  
DATE

PREPARED BY:

DEBRA L. HAMILTON (WV Bar ID: 1553)  
DEPUTY ATTORNEY GENERAL  
STATE CAPITOL BLDG. 1, ROOM 26-E  
CHARLESTON, WEST VIRGINIA 25305  
*for the West Virginia Board of Registration for Professional Engineers*

APPROVED BY:

DONALD L. STENNETT (WV Bar ID: 3593)  
STENNETT LAW FIRM PLLC  
P.O. BOX 11468  
CHARLESTON WV 25339  
*for Respondent*