

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: Walter R. Wilcox
 L. A. Fuess Partners, Inc.

C-2005-7
C-2005-10

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president (hereinafter the "Board"), and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action which shall be taken against Walter R. Wilcox and L. A. Fuess Partners, both of Texas. 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. Walter R. Wilcox is a principal in L. A. Fuess Partners, an engineering firm in Dallas Texas.
3. Complaints against both Respondent Wilcox and the respondent corporation were initiated and filed by the Board on September 19, 2005, and were served upon Respondents by certified mail.
4. Respondents are represented in this matter by Kenneth E. Webb, Jr., of the Charleston law firm of Bowles, Rice, McDavid, Graff and Love, LLP.

5. The complaint against Respondent Wilcox alleged that Mr. Wilcox engaged in the unlicensed practice of engineering and that he perpetrated a fraud or deceit upon this Board in attempting to obtain his license.
6. The complaint against the respondent partnership alleged that Respondent Wilcox's firm, L. A. Fuess Partners, practiced engineering without the required certificate of authorization (COA).
7. The circumstances giving rise to these complaints are as follows:
 - (a) Respondent Wilcox filed his application for licensure on January 5, 2005, and thereafter made inquiries regarding when his West Virginia professional engineering license would be issued.
 - (b) On at least two occasions when Respondent Wilcox was inquiring about his license, the Board's investigator asked whether Mr. Wilcox or his firm had performed any engineering work in West Virginia, and Respondent Wilcox replied in the negative.
 - (c) Respondent Wilcox was approved for issuance of a comity license on January 18, 2005, and was notified of same by letter dated January 19, 2005, which also stated: "You are not licensed to practice engineering in the State of West Virginia until we have a copy of your seal on file in our office. In order to complete the registration process, please remit a check ... and return it along with a copy of this letter showing your seal in the area indicated below."

- (d) The indicia of Mr. Wilcox's seal was received by the Board on January 24, 2005, at which time Mr. Wilcox was a registered engineer licensed to practice in the State of West Virginia.
 - (e) L. A. Fuess applied for a COA on January 11, 2005; this application was held until issuance of Respondent Wilcox's license on January 24, 2005, and thereafter issued.
 - (f) During August of 2005, the Board's investigator found drawings dated January 7, 2005, prepared by the Dallas architectural firm Partners in Architecture for a theatre project in West Virginia which listed respondents as the Structural Engineer for the project.
8. Respondent Wilcox admits he and his firm participated in the theatre's design effort and began work on the project prior to receiving notice of approval of his application for licensure and further admits that the respondent firm, of which he is a principal, had not received its COA at the time it commenced work on the West Virginia theatre project. However, Respondent Wilcox states that no drawings, preliminary or otherwise, were done by Respondents and included in the Partners in Architecture's list of drawings dated January 7, 2005.
9. Respondent Wilcox stated in a letter to the Board's investigator dated September 15, 2005: "We (now) fully understand that this is in violation of Board Regulations and accept whatever consequences the Board deems appropriate."
10. Respondent states that his name, company and logo were to be removed from the architect's drawings by addendum, but the Board finds the practice of engineering occurred at the time Respondent Wilcox and Respondent firm

performed work on the West Virginia theatre project and removal of the identifying information after the fact would not have rectified the initial violations of practicing engineering without the required registration and COA.

11. Respondent Wilcox admits that he denied having performed work prior to licensure but states he honestly though mistakenly believed his conduct and that of his firm did not constitute the practice of engineering because the work was performed in his Texas office rather than in West Virginia and thus was not in violation of the state's engineering law.
12. The Board finds engineering work for a project located in West Virginia is unquestionably the practice of engineering in this State regardless of where the actual work is performed.
13. Based on this current understanding, Respondent Wilcox admits his work on the theatre project in West Virginia constituted the practice of engineering in West Virginia without a license.
14. Based on the same current understanding, Respondent firm admits the work was performed without the required certificate of authorization to practice engineering in West Virginia.
15. Respondent Wilcox understands that his initial representation to the Board's investigator regarding his and his firm's work in West Virginia prior to licensure greatly aggravated the circumstances giving rise to this Complaint.
16. Respondent Wilcox was charged under W. Va. Code §30-13-21(a)(1) with regard to his actions in attempting to obtain his license, but it is also appropriate to charge him under sub-paragraph (12), providing false information to the Board.

17. The Board has agreed to withdraw the Code §30-13-21(a)(1) charge and proceed solely under sub-paragraph (12).
18. Respondents have waived their right to a hearing on this matter and waive other rights set forth in W. Va. Code §30-13-1 *et seq.* and the procedural rules of the Board.
19. The Board incurred expenses with regard to this Complaint, including the time of the investigator and the costs of getting copies of the drawings evidencing the unlicensed practice.
20. Respondents agree to accept an informal settlement of Complaints 2005-7 and 10.

CONCLUSIONS OF LAW

21. West Virginia Code §30-13-21 authorizes the Board to discipline any person practicing or offering to practice engineering in the State of West Virginia.
22. Practicing engineering without a license is an action that would subject a person or firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 C.S.R. 1.15.1.
23. Fraud, deceit, misrepresentation, or misinformation to the Board is an action that would subject a person or firm to discipline by the Board, including a civil penalty up to \$15,000.00. 7 C.S.R. 1.15.1.
24. Practicing engineering without a certificate of authorization is an action that would subject a firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 C.S.R. 1.15.1.
25. Among its other powers, the Board has the power to assess civil penalties and related costs for each count or separate offense in an amount set by the Board. W. Va. Code §30-13-21(d)(4).

26. Each day of continued violation may constitute a separate offense. 7 C.S.R. 1.15.3.

CONSENT OF WALTER WILCOX

Walter Wilcox, by affixing his signature hereon, agrees to the following:

27. Mr. Wilcox is represented by counsel and is aware of the option to pursue this matter through appropriate administrative and/or court procedures, but intelligently, knowingly and voluntarily waives his right to do so.
28. Mr. Wilcox intelligently and voluntarily waives his right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
29. Mr. Wilcox consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
30. Mr. Wilcox 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
31. Mr. Wilcox acknowledges that proof of any misstatement or misrepresentation made by him in his application for licensure or other document or statement relied upon in the entering of this consent agreement will result in the rescission of this agreement, the reinstatement of the Complaint, and the addition of any other charges which may ensue from providing false information to the Board in violation of West Virginia engineering law.

CONSENT OF L. A. FUESS PARTNERS

Walter Wilcox, as a principal in L. A Fuess Partners, by affixing his signature hereon, agrees to the following on behalf of his firm:

32. L. A. Fuess Partners is represented by counsel and is aware of the option to pursue this matter through appropriate administrative and/or court procedures, but intelligently, knowingly and voluntarily waives its right to do so.
33. L. A. Fuess Partners 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.
34. L. A. Fuess Partners consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
35. L. A. Fuess Partners 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.
36. L. A. Fuess Partners acknowledges that proof of any misstatement or misrepresentation made by on its behalf in the application for COA or other document or statement relied upon in the entering of this consent agreement will result in the rescission of this agreement, the reinstatement of the Complaint, and the addition of any other charges which may ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

37. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Agreement shall serve as an informal settlement of this Complaint pursuant to West Virginia Code §30-13-22(b).
38. The Board **ORDERS** Respondent Wilcox to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering without a license.
39. The Board **ORDERS** Respondent Wilcox to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for providing false information to the Board.
40. The Board **ORDERS** Respondent L. A. Fuess Partners to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering without a certification of authorization.
41. The Board **ORDERS** Respondents to pay administrative costs in the total amount of One Hundred Dollars (\$100.00).
42. The civil penalties totaling One Thousand Dollars (\$1000.00) imposed herein must be paid within fifty (50) days of the date of the signature of the Board President, such penalty to be made payable to the "WV P.E. Board" for immediate transfer to the general fund of the State of West Virginia upon receipt.
43. Administrative costs shall be made payable to the "WV P.E. Board."
44. Upon receipt of this signed agreement and payment of the civil penalties and costs agreed to in this Consent Order, Respondents shall be entitled to practice engineering in the State of West Virginia during all times a valid license and COA are in effect.

45. Respondent acknowledges that the initial Complaint and this Consent Agreement are public records and may be made available upon request and agrees that only the sum and substance of the nature of the Complaint, without specific reference to the initial charge under W. Va. Code §30-13-21(a)(1), and this Agreement 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).
46. Any violation of the terms of this Consent Agreement shall be immediate cause for a hearing and further disciplinary action by the Board.

WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

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

Date: 01/06/06


WALTER WILCOX, individually,

Date: 12.16.2005


L. A. FUESS PARTNERS, Inc.,
by WALTER WILCOX, principal,

Date: 12.16.2005

RECEIVED

JAN 5 - 2006

WV REGISTRATION BOARD