

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: SEAN SIMON

CASE NO. 2004-1

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, Jr., its President (hereinafter the "Board"),¹ 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 Sean Simon by the Board pursuant to West Virginia Code § 30-13-21. 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. Sean Simon, (hereinafter at times "Mr. Simon" or "Respondent") is an individual who holds a license issued by the West Virginia Board of Architects but has not been educated nor licenses as an engineer.
3. This Complaint arose in connection with work on a project designed for public occupancy wherein Respondent sealed engineering construction drawings with an Architect's seal.
4. Subsequent to the filing of the Complaint, Respondent provided this Board with a full set of drawings. The only seal on any of the drawings for all disciplines was Mr. Simon's Architect's seal.

¹Mr. Timms was elected President of the Board at a special meeting held on November 29, 2004.

5. Alpha Associates, an architecture and engineering firm hired by the Board as an independent consultant in this matter, reviewed the drawings provided by Mr. Simon in detail. They felt the design package was incomplete and not ready to be issued for construction, even on a design build basis. They felt significantly more detail was required on the structural design and on the electrical and mechanical systems.
6. Inasmuch as this work involved the practice of engineering related to a project involving public occupancy, Mr. Simon's unlicensed practice threatened the health, safety and welfare.
7. Design problems threatening the public health, safety and welfare included,
Inter alia:
 - a. Structural deficiencies with the truss design and supports;
 - b. Mechanical and electrical issues identified by the engineering company(s) hired by Mr. Simon; and
 - c. Deficiencies identified by the State Fire Marshal's Office.
8. On October 18, 2004, Mr. Simon voluntarily appeared for an informal conference at space made available by Board Member Timms in Bridgeport, West Virginia. Mr. Timms was joined by the Board's attorney, its investigator and its executive director. Respondent chose to appear on his own and be heard on these matters.
9. Based on the findings set forth above and the discussion at the informal conference, Mr. Simon admits he did not have that degree of education, experience and expertise necessary to enable him to sign all the drawings; i.e., he needed engineering support on this project.
10. Mr. Simon admits that in placing his seal on the drawings at issue, he was practicing engineering as defined in of W. Va. Code § 30-13-2, was doing so

without a license, and in practicing engineering without a license, posed a threat to the public health, safety and welfare of the people of West Virginia in violation of W. Va. Code § 30-13-2.

11. Sean Simon agrees to accept an informal settlement of Complaint 2004-1 and, in so doing, agrees to waive his 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.
12. In reaching this settlement, the Board finds that Mr. Simon's cooperation during the investigation and the steps voluntarily taken by Respondent to rectify the situation and provide reassurance to the Board regarding any and all issues regarding the public's health and safety have been taken into account by the Board and have mitigated the amount of fines agreed to herein.

CONCLUSIONS OF LAW

13. West Virginia Code § 30-13-2 declares the practice of engineering to be subject to regulation by the Board "(i)n order to safeguard life, health and property and to promote the public welfare..."
14. 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.
15. Among its other powers, the Board has the power to levy fines and assess costs. W. Va. Code § 30-13-21(d)(4).
16. Practicing engineering without a license, to which Respondent has admitted, is an action that would subject a person to discipline by the Board.

CONSENT OF SEAN SIMON

Sean Simon, by affixing his signature hereon, agrees to the following:

17. Sean Simon acknowledges that he is aware of the option to retain and be represented by legal counsel and/or pursue this matter through appropriate

administrative and/or court procedures, but intelligently, knowingly and voluntarily waives his right to do so.

18. Sean Simon 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.
19. Sean Simon acknowledges that he should not seal electrical, mechanical, plumbing, civil or structural engineering drawings and shall perform professional services only when Mr. Simon, together with those with whom he may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.
20. Sean Simon consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
21. Sean Simon acknowledges that the Board may reject this proposal and may hold a hearing to impose other sanctions of a disciplinary nature as it deems appropriate.

ORDER


22. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Agreement shall serve as an informal settlement pursuant to West Virginia Code § 30-13-22(b).
23. The Board **ORDERS** Sean Simon to pay a fine in the amount of Five Hundred Dollars (\$500.00) for practicing engineering without a license.
24. The Board **ORDERS** Sean Simon to pay a fine in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for threatening the public health, safety and welfare.
25. The Board **ORDERS** Sean Simon to pay costs in the amount of Two Thousand Six Hundred Dollars (\$2,600.00).

26. Unless other arrangements are made, these payments shall be received by the Board no later than thirty (30) days after Mr. Simon signs this Agreement and shall be made payable to the West Virginia State Board of Registration for Professional Engineers. All amounts constituting fines shall be transferred to the general fund of the State of West Virginia by the Board upon receipt.
27. Any violation of the terms of this Consent Agreement shall be immediate cause for a hearing and further disciplinary action by the Board.
28. Mr. Simon acknowledges that this Consent Agreement is a public record and agrees that the sum and substance of the nature of the Complaint and this Agreement may be set forth in Board publications and on the Board website.

WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

By: 
Leonard J. Timme, Jr., P.E.
Board President

Date: Jan 6, 2005


Sean Simon, Respondent

Date: 1/26/05