

RECEIVED

JUN 28 2014

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: STEPHEN P. MASLAN

C2014-04

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 a Complaint seeking disciplinary action against Stephen P. Maslan (hereinafter "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 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 licensed in several states, including his home state of Kansas, and has been a licensed professional engineer in West Virginia since 1987, holding license number 10225.
3. Respondent disclosed on his 2013-14 renewal form that he had been subject to disciplinary action since his last West Virginia PE renewal, which initiated a Board investigation.
4. The investigation revealed the following:
 - a. By Final Order dated July 31, 2012, the Kansas State Board of Technical Professions [referred to as the "Kansas Final Order" and the "Kansas board"]

assessed a substantial fine against Respondent on two counts of deviation from generally accepted engineering standards and practices in the design of two fire alarm systems, one of which was a violation of a Settlement Agreement and Consent Order entered between Respondent and the Kansas board dated July 2, 2010 [“the Kansas consent order”], which was a reciprocal action based on a settlement agreement between Respondent and the Missouri Board of Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects on October 22, 2009 [“the Missouri settlement”];

- b. The State of Missouri entered a Disciplinary Order dated May 30, 2013 [“the Missouri order”] pursuant to a Missouri probation violation complaint which was based, in part, on the Kansas Final Order; and
- c. Several other jurisdictions had taken or were pursuing reciprocal disciplinary action against Respondent.

- 5. The Board initiated complaint number C2014-04 at its regular meeting on August 6, 2013 based on reciprocal discipline pursuant to W. Va. Code § 30-13-21(a)(5), which was filed and served on August 14, 2013.
- 6. Respondent filed a response on August 20, 2013, and thereafter has provided the Board with relevant documents relating to the Kansas disciplinary matter, the disciplinary matter taken in the state of Missouri, and the several reciprocal actions taken or being pursued in other states based on the actions in Kansas and Missouri.
- 7. As part of this Board’s investigation, Respondent also provided what he described as a comprehensive list of projects in West Virginia which he reviewed and sealed, none of which were the subject of a third-party complaint, involved a fire alarm system, or evidenced a deviation from generally accepted engineering standards and practices.

8. However, based on the myriad of disciplinary actions against Respondent, the Board's investigation included a review of Respondent's renewal forms since the 2009-2010 renewal years which revealed years in which Respondent clearly had been the subject of disciplinary action or investigation but for which Respondent indicated there had been no action or investigation. Specifically,
 - a. On Respondent's 2011-12 renewal form, dated June 14, 2011, Respondent did not disclose the Kansas Consent Order of July 2, 2010, and also failed to report a Kentucky consent decree dated July 8, 2011, taking reciprocal action based on the Missouri settlement despite the fact that Respondent was likely aware of the matter since he signed the consent decree less than one month after submitting the renewal form to this Board; and
 - b. On Respondent's 2012-13 renewal form, dated June 29, 2012, Respondent again did not disclose any disciplinary action had been taken during the prior year despite the entry of the Kentucky consent decree during that time; and
 - c. Respondent, on the 2012-13 renewal form, did not disclose the Kansas matter resulting in the Kansas Final Order even though it states Respondent was aware of the Kansas matter at least as of June 27, 2012.
9. After Respondent's disclosure on his 2013-14 renewal form and the initiation of this Complaint, Respondent has been prompt in updating the Board regarding reciprocal actions taken by other states in which he is or was licensed, as well as developments in the matters before the respective boards in Kansas and Missouri.
10. Respondent admits that he repeatedly failed to report on his annual renewal form actions taken in other jurisdictions which could subject him to disciplinary action by this Board pursuant to W. Va. Code § 30-13-21(a)(5).
11. Respondent further admits that such failure to report is a violation of the Rules of Professional Responsibility (W. Va. Code R. § 7-1-12.6) and constitutes false information provided to the Board in violation of W. Va. Code § 30-13-21(a)(12).

12. The Board has taken into account the following factors in reaching this settlement:
Respondent has never had a complaint filed against him by a third-party in West Virginia, cooperated in the investigation and resolution of this Complaint, and clearly is now well apprised of his on-going duty to report disciplinary matters and any investigations on any renewal form submitted to this Board.
13. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs and administrative costs were incurred in the investigation, initiation and resolution of this complaint.

CONCLUSIONS OF LAW

14. 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.*
15. The Board may take disciplinary action against any person who has been disciplined by another jurisdiction if one of the grounds for such discipline is the same or substantially equivalent to grounds for discipline in W. Va. Code § 30-13-1 *et seq.* W. Va. Code § 30-13-21(a)(5).
16. The Board may take disciplinary action against any person who has provided false information to the Board. W. Va. Code § 30-13-21(a)(12).
17. The Board may take disciplinary action against any person who has violated a Rule of Professional Responsibility. W. Va. Code § 30-13-21(a)(4).
18. The West Virginia Board's Rules of Professional Responsibility require licensees to report on the annual renewal form actions in other jurisdictions taken for reasons or causes that would constitute a violation of West Virginia engineering law. W. Va. Code R. § 7-1-12.6.

19. 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).
20. Providing misinformation to the Board may subject a person to discipline by the Board, including a civil penalty up to Fifteen Thousand Dollars (\$15,000.00). W. Va. Code R. § 7-1-15.1.
21. Violating a Rule of Professional Responsibility 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. § 7-1-5.1.
22. 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.
23. 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

Respondent Maslan, by affixing his signature hereon, agrees to the following:

24. Respondent is aware of his right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures, including his right to a formal hearing before the Board, and Respondent intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

25. Respondent admits that he failed to report actions taken in other jurisdictions which could subject him to disciplinary action by this Board pursuant to W. Va. Code § 30-13-21(a)(5).
26. Respondent admits that each instance of his failure to report other jurisdictions' disciplinary actions is a violation of § 7-1-12.6 of the West Virginia Board's Rules of Professional Responsibility.
27. Respondent admits that each instance of his failure to report other jurisdictions' disciplinary actions constitutes false information provided to the Board in violation of W. Va. Code § 30-13-21(a)(12).
28. Respondent acknowledges that he has a continuing legal duty to report other jurisdictions' disciplinary actions.
29. 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.
30. 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 C2014-04. This paragraph is binding on Respondent even in the event that the Board does not approve this Consent Order.
31. Respondent acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent's activities in any jurisdiction in consideration of this Consent Order.
32. Should the Board not approve this Consent Order, Respondent waives any objections to the Board or any of its members participating in the adjudication of this matter. This

paragraph is binding on the Respondent even if the Board does not approve this Consent Order.

33. Respondent acknowledges 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.
34. Respondent understands 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 disciplinary matter involving Respondent which may be before this Board.
35. Respondent understands that the complaint and this Consent Order are public records which, together with other public documents in the file, must be made available upon legal request in accordance with the state's Freedom of Information Act.
36. 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).
37. 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 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.

38. Respondent acknowledges that proof of any material 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 license or certification issued to Respondent 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 C2014-04 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **REPRIMANDS** Respondent Maslan for his failure to report disciplinary actions taken in other jurisdictions.
3. 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).
4. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
5. This matter shall be closed upon execution of this Consent Order by both parties.
6. 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

disciplinary matter involving Respondent which may come before this Board, including any future matter which may give rise to reciprocal discipline by this Board.

7. 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:



STEPHEN P. MASLAN

6/25/14

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 22nd day of July, 2014.

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

By: _____


**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**