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WV BOARD

BEFORE THE WEST VIRGINIA STATE BOARD  
OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE:       WALTER J. FITZGERALD

C2009-16

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, Nicole A. Cofer, Assistant Attorney General for the State of West Virginia (hereinafter the "Board") for the purpose of agreeing to disciplinary action to be taken against Walter J. Fitzgerald (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 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. Respondent is a licensed professional engineer in the State of West Virginia holding license number 16468.
3. Respondent has also, for all pertinent times hereto, been licensed in the State of Florida, having been issued license number PE 24636.
4. On or about July 27, 2004, Respondent sealed, signed and dated an Electrical Photometric Site Plan (hereinafter "site plan") for the Melrose Apartments in West

Palm Beach, Florida. The site plan showed the illumination levels from outside security lights which had been erected pursuant to a lighting design created by Power Designs, Inc., a Florida Licensed Contractor.

5. On or about January 25, 2008, the Florida Board of Professional Engineers filed complaint number 200705175 against Respondent for sealing, signing and dating a lighting plan and a certification letter for aforementioned apartments in West Palm Beach, Florida without personally preparing the plans or providing reasonable supervision of the plan preparation which constituted a violation of Chapters 471 and 455 of Florida law.
6. On or about July 10, 2008, Respondent entered into a Settlement Stipulation with the Florida Board of Professional Engineers, in which he agreed to receive a reprimand, pay a civil penalty in the amount of five thousand dollars (\$5,000.00), pay administrative costs totaling one hundred ninety-five dollars (\$195.00), complete an ethics class, probation for eighteen (18) months, complete the Florida Engineering Practice Study Guide and to submit examples of his work to the Florida Board for review.
7. On or about December 17, 2008, the Florida Board of Professional Engineers adopted the July 10, 2008 Settlement Stipulation entered between Respondent and the Florida Board of Professional Engineers with the above-referenced terms.
8. On or about March 24, 2009, this Board initiated Complaint No. C2009-16 for the

reciprocal disciplinary action of Respondent's aforementioned violations and subsequent disciplinary actions.

9. The Board incurred only minimal administrative cost in connection with the investigation, prosecution and resolution of this complaint and, in its discretion, will not assess administrative costs against Respondent although it is within its power to assess such costs according to W.Va. Code R § 7-1-14.4.
10. Respondents have waived their 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.

#### **CONCLUSION OF LAW**

1. The Board is authorized to suspend or revoke or refuse to issue, restore or renew a license or impose a civil penalty upon any licensee who has "[b]een disciplined by another state, territory, the District of Columbia, foreign country, the United States government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those grounds for discipline contained in this article." West Virginia Code § 30-13-21(a)(5).
2. The Board is authorized to suspend or revoke or refuse to issue, restore or renew a license or impose a civil penalty upon 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." West Virginia Code § 30-13-21(a)(10).

3. Signing or affixing a professional engineer's seal for work that has not been prepared or completely checked by or under the direct supervision of the same professional engineer, to which Respondent has admitted, is an action that is subject to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W.Va. Code R § 7-1-15.1.
4. The Board is authorized to assess civil penalties against any person who violates any provisions 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).
5. Each day of continued violation may constitute a separate offense. W.Va. Code R § 7-1-15.3.

#### **CONSENT OF RESPONDENT**

Walter J. Fitzgerald, individually, by affixing his signature hereon, agrees to the following:

1. Respondent has exercised his right to be represented by counsel and has been made aware of his option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives his right to

do so.

2. Respondent 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 in this Consent Order.
3. Respondent admits that he that the facts presented in Florida complaint number 200705175 constituted a violation of Chapters 471 and 455 of Florida law and entered into a settlement with the Florida Board of Professional Engineers outlining the corresponding disciplinary action.
4. Respondent admits that the facts presented in the aforementioned Florida complaint which prompted the disciplinary action settled upon, were the same or substantially equivalent to those grounds for discipline contained in W. Va. Code § 30-13-21(a)(10), thereby subjecting him to disciplinary action by this Board.
5. Respondent accepts the findings of fact set forth above and the Board's Order below and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
6. Should the Board not approve this Consent Order, presentation to and consideration of this Consent Order and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Order.

7. 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.
8. Respondent understands 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 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).
9. 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 license or certificate of authorization issued to Respondents, 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 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 pay a civil penalty in the amount of Five Hundred dollars (\$500.00) for the reciprocal action based upon the Florida Board of

Professional Engineers Complaint and subsequent settlement.

3. The civil penalties 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.
4. The Board **ORDERS** Respondent's license is suspended for a period of six (6) months from the date that this Order is entered by the Board during which time, Respondent is not to practice engineering in the State of West Virginia.
5. This Consent Order and the underlying Complaint are public records and 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 NCEES.
6. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
7. 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.
8. If the civil penalties imposed 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 total amount of payment agreed to herein, Five Hundred Dollars (\$500.00), 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.

9. 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.
10. 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.

AGREED TO BY:

  
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WALTER J. FITZGERALD


5-13-09  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this:

9<sup>TH</sup> day of JUNE, 2009.



WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL  
ENGINEERS,

By:   
LEONARD J. TIMMS JR., P.E.,  
BOARD PRESIDENT

06/09/09  
DATE