

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

RECEIVED

OCT 04 2012

WV PE BOARD

IN RE: KEVIN D. BRANSCUM

C2012-12

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 Kevin D. Branscum (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 in the State of West Virginia holding license number 13739.
3. Respondent does business as a sole proprietorship but did not hold a Certificate of Authorization (COA) prior to this Board-initiated complaint and has not applied for a COA to date.
4. On March 20, 2012, the West Virginia Board of Registration for Professional Engineers initiated Complaint C2012-12 alleging Respondent practiced engineering without the required Certificate of Authorization and violated two

Rules of Professional Responsibility, which Complaint was filed and served on April 11, 2012.

5. The Complaint relates to three submissions (an initial and two revisions) to the City of Vienna, West Virginia [hereinafter referred to as “City”] for a proposed development of a coffee shop, which were reviewed by an independent engineering firm and the State Fire Marshal’s Office and found deficient.
6. The independent engineering firm found deficiencies in all three submissions, noting several matters with regard to the third submittal plans including the following:
 - The stormwater management calculations were either not provided as required or were incorrect.
 - The topographical survey was either not provided or had incorrect and/or missing information.
 - Site improvements appeared to encroach onto adjacent properties.
7. The State Fire Marshal, whose review related only to State Fire Code requirements and not Building Code or ADA requirements, found that the building plans did not appear to meet the West Virginia State Fire Code in several enumerated particulars, including problems with the number and location of exits, the need for architectural plans with a legend, HVAC plans, sprinkler plans, electrical plans, additional plans for such things as how vehicles get through the drive-through pickup window, and other concerns.
8. An email to Board staff dated May 10, 2012, was deemed a response to the Complaint, albeit informal and not within the 30-day response period.
9. In his untimely response, Respondent stated he was outside the country at times and at home very little; he further stated that he had no desire to operate an

engineering firm in West Virginia and was only doing the work at issue in the Complaint for a friend who had difficulty finding “a local agency” to do the work.

10. The Board finds this statement neither a justification nor mitigation of practicing without the required Certificate of Authorization or in a manner which violates the Rules of Professional Responsibility.
11. Respondent admits he did not have a Certificate of Authorization at the time he sealed and submitted the documents at issue in this Complaint.
12. Respondent admits that the stormwater management plans he sealed and submitted were not in compliance with provisions of the City’s stormwater ordinances in effect on the dates of the submissions.
13. Respondent admits that the building plans he sealed and submitted were not in compliance with relevant provisions of the City’s building code in effect on the dates of the submissions.
14. Respondent admits that the building plans he sealed and submitted were not in compliance with relevant provisions of the State Fire Code in effect on the dates of the submissions.
15. Respondent admits that sealing designs which were not in compliance with the applicable stormwater management plans, building codes or State Fire Codes violate the Rules of Professional Responsibility in that the design documents do not conform to accepted engineering standards and evidence that Respondent undertook an assignment that was beyond his education and experience in the technical fields of engineering involved.

16. In determining the amount of any civil penalty, the Board has taken into consideration Respondent's failure to formally and timely respond to the Complaint, the cavalier manner in which Respondent dealt with the Complaint, what amount of civil penalty would be a substantial economic deterrent to the violation, the circumstances leading to the violation, and the interest of and risk of harm to the public caused by the actions forming the basis of the disciplinary action.
17. The Board has incurred administrative costs in excess of \$1,000.00 in this matter, including noticing the Complaint for hearing prior to Respondent's being willing to engage in meaningful settlement discussions.

CONCLUSIONS OF LAW

18. 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.
19. 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).
20. Such disciplinary action may be taken against any licensee who has failed to comply with any rules of the Board, including the Rules of Professional Responsibility, which require that a professional engineer exercise the "privilege of performing engineering services only in the areas of their competence

according to current standards of technical competence” and “shall undertake assignments only when qualified by education or experience in the specific technical fields of engineering involved.” W. Va. Code R. 7-1-12.2(b) and 12.4(a).

21. 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).
22. 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.
23. 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

Kevin D. Branscum, individually, by affixing his signature hereon, agrees to the following:

24. Respondent is aware of his right to be represented by counsel and is aware of his option to pursue this matter through appropriate administrative and/or court procedures and Respondent intelligently and voluntarily waives his right to do so.

25. Respondent admits he violated the following Rules of Professional Responsibility in connection with the plans submitted to the City by: (1) performing engineering services outside his areas of competence which did not conform to current standards of technical competence; (2) sealing design documents which did not conform to accepted engineering standards; and (3) undertaking an assignment when he was not qualified by education or experience in the specific technical fields of engineering involved.
26. 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.
27. 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.
28. 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 C2012-12. This paragraph is binding on Respondent even in the event that the Board does not approve this Consent Order.
29. 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.
30. 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.

31. Respondent acknowledges that this Consent Order, the underlying Complaint and his response of May 10, 2012, and other documents from public entities referenced in this Consent Order, are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
32. Respondent agrees that the sum and substance of the Complaint and this Consent Order 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).
33. 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 by Respondent except an action to enforce the terms of this Consent Order.
34. Respondent acknowledges that non-compliance with this Consent Order may result in the rescission of this Consent order, 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.

35. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this Consent Order, the reinstatement of Complaint C2012-12, the summary revocation of any license or certificate of authorization issued to the Respondent, 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.
36. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

ORDER

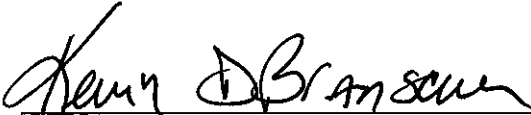
1. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to cease and desist from any practice of engineering in this State prior to application for and receipt of a Certification of Authorization from this Board.
3. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) for his violation of the Rules of Professional Responsibility relating to sealing documents that did not conform to accepted engineering standards and undertaking an assignment outside his areas of education, experience and/or competence.

4. The Board **ORDERS** Respondent to pay administrative costs in the amount of Five Hundred Dollars (\$500.00).
5. 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, such payment to be made payable to the W. Va. P.E. Board.
6. The civil penalty agreed to herein in the total amount of Two Thousand Dollars (\$2,000.00) must be paid within six (6) months from the date of the Board's entry of this Consent Order evidenced by the date of the President's signature, such payments 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.
7. The civil penalty may be paid in installments, which installments shall not be less than Five Hundred Dollars (\$500.00) per installment.
8. The sum and substance of the Complaint and this Consent Order 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.
9. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board, including permanent revocation of Respondent's license to practice engineering in this State.
10. 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.

11. If the civil penalty and administrative costs 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 the payment agreed to herein of Two Thousand Five Hundred Dollars (\$2,500.00), 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.
12. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty and administrative costs agreed to herein.
13. 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:



KEVIN D. BRANSCUM
Respondent



DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 18TH day of SEPTEMBER, 2012.

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

By:



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

9/18/12
DATE