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BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: BRADLEY JOHN AYERS **C2018-16**
AYERS ENGINEERING, LLC

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 Bradley John Ayers (hereinafter "Respondent Ayers") and Ayers Engineering, LLC (hereinafter "Respondent Firm") (together, "Respondents"). 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 Ayers is a licensed professional engineer in Virginia and was a licensed professional engineer in West Virginia, license number 014243 issued on February 28, 1999, but allowed his West Virginia license to lapse in 2003.

3. Subsequent to the filing of this complaint, Respondent applied for reinstatement of his license, which was reinstated on May 17, 2018.

4. Respondent Firm is solely owned by Respondent Ayers and is organized under the laws of the state of Virginia, with its principal place of business in Bluefield, Virginia.

5. Upon Respondent Ayers' reinstatement, a previously applied for Certificate of Authorization (COA) was issued on May 17, 2018, allowing Respondent Firm to practice engineering in the State of West Virginia.

6. After being made aware that Respondents were or had been working on engineering projects in West Virginia, the Board's investigation revealed that Respondents offered and provided engineering services on two West Virginia projects.

7. The Board initiated Complaint Number 2018-16 at its regular meeting on March 20, 2018, which was filed and served on March 29, 2018.

8. Respondent initiated settlement negotiations with the Board resulting in this Consent Order in lieu of filing a response to the Complaint.

9. Respondents offered and practiced engineering on two projects in West Virginia on a lapsed professional engineering license and without the required COA, in violation of West Virginia engineering law.

10. The Board has taken into account the following factors in reaching this settlement: Respondents applied for the necessary credentials shortly after the filing of this complaint; the engineering work did not pose a harm to the public; and Respondents promptly cooperated in the resolution of the complaint.

11. 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

12. 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.*

13. Bradley John Ayers, as the owner of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

14. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-3(e), in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.

15. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. W. Va. Code § 30-13-17.

16. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration of, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code § 30-13-21(a)(4).

17. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to firms. W. Va. Code § 30-13-21(d).

18. Based on the findings of fact set forth above, and the legal citations set forth herein, Respondent Ayers violated W. Va. Code § 30-13-21(a)(4) for one count of offering to practice engineering in West Virginia without the required license and two counts of practicing engineering in West Virginia without the required license.

19. Respondent Firm violated W. Va. Code § 30-13-21(a)(4) for one count of offering engineering services in West Virginia without the required COA and two counts of practicing engineering in West Virginia without the required COA.

20. 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).

21. Practicing engineering, as defined by W. Va. Code § 30-13-3(e), without a license is an action that 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. § 7-1-15.1.

22. Practicing engineering, as defined by W. Va. Code § 30-13-3(e), without a valid Certificate of Authorization is an action that may subject a firm 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.

23. 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.

24. 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 RESPONDENTS

Respondent Bradley John Ayers, individually and as the owner of Ayers Engineering, LLC, by affixing his signature hereon, agrees to the following:

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

26. Respondent Ayers admits that he did not have a license to practice engineering in the State of West Virginia during the time he offered and practiced engineering in West Virginia on two projects, in violation of West Virginia engineering law.

27. Respondent Firm admits it has never had a Certificate of Authorization to practice engineering or offer engineering services in the State of West Virginia, in violation of West Virginia engineering law.

28. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

29. Respondents acknowledge 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, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents' activities in West Virginia in consideration of this Consent Order.

30. Should the Board not approve this Consent Order; Respondents waive any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondents even if the Board does not approve this Consent Order.

31. Respondents acknowledge 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.

32. Respondents understand 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 Respondents which may be before this Board.

33. Respondents understand 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.

34. Respondents agree 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's 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).

35. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation or non-renewal or non-reinstatement of any license or certification issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.

36. Respondents acknowledge 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 Respondents 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 2018-16 pursuant to West Virginia Code § 30-13-22(b).

2. The Board **ORDERS** Respondent Ayers to pay a civil penalty in the amount of Two Hundred and Fifty Dollars ($250.00) for offering to practice engineering on two projects in West Virginia without a license.

3. The Board **ORDERS** Respondent Ayers to pay a civil penalty in the amount of Five Hundred Dollars ($500.00) for two counts of practicing engineering in West Virginia without a license.

4. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for offering to practice engineering in West Virginia without a certificate of authorization.

5. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Five Hundred ($500.00) for two counts of practicing engineering in West Virginia without a certificate of authorization.

6. The civil penalties imposed herein totaling One Thousand Five Hundred Dollars ($1,500.00) must be paid within thirty (30) days of the date of entry set forth below, 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.

7. 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's 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).

8. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

9. 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 Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein ($1,500.00), 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.

10. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.

11. 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 Respondents which may come before this Board.

12. 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.

* *

[signatures appear on next page]

AGREED TO BY:

_____ 7/2/18

BRADLEY JOHN AYERS, Individually and as the Owner of AYERS ENGINEERING, LLC **DATE**

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 17th day of July, 2018.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: _____

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT