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WV PE BOARD

BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: ZERO & ASSOCIATES and LAWRENCE ZERO **C2022-02**

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Garth E. Thomas, Jr., P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Board-initiated Complaint seeking disciplinary action against Zero & Associates ("Respondent Firm") and Lawrence Zero, ("Respondent Zero") (collectively "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 this 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 Firm is a sole proprietorship organized under the laws of the State of California with its principal place of business in Costa Mesa, California. Respondent Zero is the owner of the Respondent Firm.
3. Respondent Firm has never held a West Virginia Certificate of Authorization ("COA").
4. Respondent Zero is a licensed professional engineer in California, and other states.
5. Respondent Zero has never held a West Virginia Professional Engineer Registration (a.k.a. "license").
6. The Board received information that Respondent Firm, in June 2021, provided engineering services for an engineering project in Harrison County, West Virginia. Specifically, that it had submitted mechanical and plumbing drawings for said project. The drawings were dated June 1, 2021.

7. This resulted in a Board-initiated investigation, which was the basis of the Board's Complaint which set forth allegations that Respondent Firm had practiced engineering without the required COA.

8. The same Complaint set forth allegations that Respondent Zero had practiced engineering by creating the aforesaid mechanical and plumbing drawings at a time when he did not possess a West Virginia license.

9. The Board initiated Complaint Number C2022-02 at its regular meeting on July 21, 2021, which was received and filed by the Board on said date.

10. Respondents, in lieu of filing a verified response, agreed to settle this matter through the entry of this Consent Order, wherein, Respondents would forego their right to an administrative hearing, and their right to appeal, by making certain admissions set forth herein.

11. Respondent Firm will admit that it provided engineering services in West Virginia without the required Certificate of Authorization.

12. Respondent Zero will admit that he provided engineering services in West Virginia without the required Certificate of Registration.

13. The Board has considered the following factors in reaching this settlement: there was no risk of harm to the public; the violations did not pose harm to the public; and Respondents cooperated in the resolution of this Complaint.

14. 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

15. 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.*

16. Lawrence Zero, as Owner of Respondent Firm, has the power and authority to make admissions, and otherwise act on behalf of Respondent Firm. In addition, Respondent Zero has the power and authority to make admissions, and otherwise act on his own behalf.

17. The Board may reprimand, suspend or revoke or refuse to issue, restore or renew a certificate of registration or authorization, or place on probation, impose a civil penalty or reprimand any professional engineer or firm, 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), (b) and (d), and §30-13-22(d).

18. The provisions of W. Va. Code §30-13-21(a) are applicable to persons and firms. W. Va. Code §30-13-21(b) and (d).

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) and W. Va. Code R §7-1-15.

20. West Virginia engineering law allows a firm to practice engineering or to offer engineering services only upon the issuance of a Certificate of Authorization by the Board. W. Va. Code §30-13-17.

21. 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) for each offense. W. Va. Code R. §7-1-15.1.

22. It is unlawful for any person to practice or offer to practice engineering, as defined by W. Va. 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.

23. 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) for each offense. W. Va. Code R. §7-1-15.1.

24. 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.

25. 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 THE RESPONDENTS

Lawrence Zero, individually, and as Owner of Respondent Firm, by affixing his signature hereon, agrees to the following on behalf of himself, and Respondent Firm, Zero & Associates:

26. Respondents acknowledge their right to consult an attorney of their choosing, at their sole expense, and they knowingly, freely, voluntarily, and without any threat of harm or act of coercion waive their right to proceed with counsel, and will proceed pro se. Further, Respondents are aware of their rights to pursue this matter through appropriate administrative and/or court proceedings, including their right to an administrative hearing before the Board, and Respondents knowingly, freely and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

27. Respondent Firm admits it did not have a Certificate of Authorization to practice engineering or offer engineering services in the State of West Virginia at the time it practiced engineering in West Virginia, in violation of West Virginia engineering law, by providing mechanical and plumbing drawings for the engineering project located in Harrison County, West Virginia

28. Respondent Zero admits that he did not have a license to practice engineering in the State of West Virginia when he practiced engineering in the State of West Virginia, in violation of West Virginia engineering law by creating the aforesaid mechanical and plumbing drawings for the engineering project located in Harrison County, West Virginia.

29. Based on the findings of fact set forth above, the legal citations set forth herein, and Respondent Firm's admission above, Respondent Firm violated W. Va. Code §30-13-21(a)(4) when it provided engineering services for a West Virginia project when it did not hold an active COA.

30. Based on the findings of fact set forth above, the legal citations set forth herein, and Respondent Zero's admission above, Respondent Zero violated W. Va. Code §30-13-21(a)(4) when he provided engineering services for a West Virginia project when he did not hold a license.

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

32. 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.

33. 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 Respondents even if the Board does not approve this Consent Order.

34. 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.

35. If the Board does reject this proposal, any admissions made herein by Respondents are deemed null and void.

36. 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, or either of them, which may be before this Board.

37. 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.

38. 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).

39. 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, non-renewal or non-reinstatement of any Certificate of Registration issued to Respondent Zero and/or Certificate of Authorization issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.

40. 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, non-renewal or non-reinstatement of any Certificate of Registration issued to Respondent Zero and/or Certificate of Authorization issued to Respondent Firm 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 C2022-02 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for practicing engineering without a Certificate of Authorization.
3. The Board **ORDERS** Respondent Zero to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for practicing engineering without a Certificate of Registration.
4. The civil penalty imposed against Respondent Firm totals Two Hundred and Fifty Dollars ($250.00), and 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.
5. The civil penalty imposed against Respondent Zero totals Two Hundred and Fifty Dollars ($250.00), and 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.
6. 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).
7. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
8. If the civil penalty imposed upon Respondent Firm herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent Firm's COA, if any, is hereby **ORDERED REVOKED**. Said revoked COA may be restored once the civil penalty is

paid, and Respondent Firm pays the appropriate fees, and is otherwise in good standing with the Board. West Virginia Code § 30-13-21(d)(1).

9. If the civil penalty imposed upon Respondent Zero herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent Zero's W.Va. P.E. Certificate of Registration (license), if any, is hereby **ORDERED REVOKED**. Said revoked Certificate of Registration may be restored once the civil penalty is paid, and Respondent Zero pays the appropriate fees, and is otherwise in good standing with the Board. West Virginia Code § 30-13-21(a).

10. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, without further notice to Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein of Two Hundred and Fifty Dollars ($250.00) together with pre-judgment interest from the date of the Board's 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.

11. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, without further notice to Respondent Zero upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein Two Hundred and Fifty Dollars ($250.00) together with pre-judgment interest from the date of the Board 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 agreed to herein, except as to the provisions set forth in paragraphs 8 and 9, above, regarding revocation of Respondent Firm's COA and Respondent Zero's Certificate of Registration, and their effects shall survive the closure of this Consent Order.

13. 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. 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 Firm which may come before this Board.

14. 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:

_____ 8/13/21

ZERO & ASSOCIATES **DATE**
By: LAWRENCE ZERO, OWNER

And

_____ 8/13/21

LAWRENCE ZERO **DATE**
INDIVIDUALLY

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 30th day of August, 2021.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: _____
GARTH E. THOMAS, JR., P.E.
BOARD PRESIDENT