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BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: EDWIN L. HEIM COMPANY **C2022-19**

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 Complaint seeking disciplinary action against Edwin L. Heim Company (hereinafter "Respondent Firm"). 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 corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Harrisburg, Pennsylvania.
3. State law requires a provider of engineering services to possess an active Certificate of Authorization (hereinafter "COA") in order to practice engineering or to offer to practice engineering in West Virginia.
4. Respondent Firm's COA (COA# C03936) was initially activated on February18, 2011.
5. In December 2021, Respondent Firm applied through the Board's website for renewal of its COA for the two-year period, January 1, 2022 through December 31, 2023.
6. In its renewal application for a COA, Respondent Firm answered "No" to the question, "In the last five years, has this firm (or EIRC) been a party in any disciplinary or other administrative proceeding, criminal or civil action, or similar matter before any local, state or national regulatory board or law enforcement agency or judicial tribunal (including WV)?"

7. Thereafter, information received by the Board revealed that on or about September 14, 2021, Respondent Firm had been disciplined by The State of Alabama Board of Licensure for Professional Engineers and Land Surveyors.

8. This disciplinary action was not reported to the Board by Respondent Firm in the aforesaid renewal application.

9. This resulted in a Board-initiated investigation, which was the basis of the Board's Complaint which set forth allegations that Respondent Firm, had, or attempted to, perpetrate fraud and/or deceit in obtaining a Certificate of Authorization by answering in the negative to the question, "In the last five years, has this firm (or EIRC) been a party in any disciplinary or other administrative proceeding, criminal or civil action, or similar matter before any local, state or national regulatory board or law enforcement agency or judicial tribunal (including WV)?" and that Respondent Firm had provided false testimony or information to the Board.

10. The Board initiated Complaint Number C2022-19 at its regular meeting on March 22, 2022, which was received and filed by the Board on said date.

11. The Board and Respondent Firm have agreed to settle this matter through the entry of this Consent Order, wherein, Respondent Firm would forego its right to an administrative hearing, and its right to appeal, by making certain admissions set forth herein.

12. Respondent Firm admits that it failed to answer the COA renewal application question "In the last five years, has this firm (or EIRC) been a party in any disciplinary or other administrative proceeding, criminal or civil action, or similar matter before any local, state or national regulatory board or law enforcement agency or judicial tribunal (including WV)?" in the affirmative. Respondent Firm contends that the said answer was an inadvertent error.

13. By agreement of the parties, Respondent Firm's alleged violation of fraud and/or deceit is dismissed, and Respondent Firm admits that it provided misinformation to the Board.

14. The Board has taken into account the following factors in reaching this settlement: the violation did not pose harm to the public; Respondent Firm was in good standing with the Board prior to the service of this Complaint upon Respondent Firm; and Respondent Firm has cooperated in the resolution of this Complaint.

15. 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

16. 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.*

17. Craig G. Timothy, EIRC of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

18. It is unlawful for any person to provide false testimony or information to the Board, in violation of the provisions of West Virginia engineering law. W. Va. Code §30-13-21(a)(12).

19. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, 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).

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

21. Providing misinformation to the Board may subject any person or firm to discipline by the Board, including a civil penalty up to Fifteen Thousand dollars ($15,000.00) for each offense. W. Va. Code R. §7-1-15.1.

22. 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).

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 RESPONDENT FIRM

Craig G. Timothy, EIRC of Respondent Firm, by affixing his signature hereon, agrees to the following on behalf of Edwin L. Heim Company:

25. Respondent Firm has the power and authority to make admissions, and otherwise act on its own behalf, and it makes such admissions herein, knowingly, freely, voluntarily, and without any threat of harm or act of coercion.

26. Respondent Firm acknowledges its right to consult an attorney of its choosing, at its sole expense, and it knowingly, freely, voluntarily, and without any threat of harm or act of coercion waives its right to proceed with counsel, and will proceed pro se. Further, Respondent Firm is aware of its rights to pursue this matter through appropriate administrative and/or court proceedings, including its right to an administrative hearing before the Board, and Respondent Firm knowingly, freely and voluntarily waives these rights and enters into this Consent Order to resolve Complaint, C2022-19; provided the Board accepts the terms and conditions set forth in this Consent Order.

27. Respondent Firm admits that it provided misinformation to the Board in its COA renewal application by mistakenly answering "No" to the question, "In the last five years, has this firm (or EIRC) been a party in any disciplinary or other administrative proceeding, criminal or civil action, or similar matter before any local, state or national regulatory board or law enforcement agency or judicial tribunal (including WV)?" The question should have been answered, "Yes."

28. 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)(12) when it answered "No" to the COA renewal application disclosure question "In the last five years, has this firm (or EIRC) been a party in any disciplinary or other administrative proceeding, criminal or civil action, or similar matter before any local, state or national regulatory board or law enforcement agency or judicial tribunal (including WV)?"

29. Respondent Firm accepts the findings set forth above and consents to the entry of this Consent Order knowingly, freely and voluntarily, and not under duress, restraint or compulsion.

30. Respondent Firm 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 Firm authorizes the Board to review and examine all investigative file materials concerning Respondent Firm's activities in West Virginia in consideration of this Consent Order.

31. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on Respondent Firm even if the Board does not approve this Consent Order.

32. Respondent Firm 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.

33. If the Board does reject this proposal, any admissions made herein by Respondent Firm are deemed null and void.

34. Respondent Firm 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 Firm which may be before this Board.

35. Respondent Firm 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 Firm 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'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).

37. Respondent Firm acknowledges 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 Authorization issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from Respondent Firm's non-compliance with this Consent Order.

38. Respondent Firm 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, non-renewal or non-reinstatement of any 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 C2022-19 pursuant to West Virginia Code §30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Five Hundred Dollars ($500.00) for providing misinformation to the Board in its renewal of its Certificate of Authorization.
3. The civil penalty imposed herein totaling Five Hundred Dollars ($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.
4. 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).
5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
6. If the civil penalty imposed herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent Firm's COA 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).

7. 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 Five Hundred Dollars ($500.00) 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.

8. 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 paragraph 6, above, regarding revocation of Respondent Firm's COA, if any, and its effects shall survive the closure of this Consent Order.

9. 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 which may come before this Board.

10. 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.

(Signature line appears on next page)

AGREED TO BY:

RESPONDENT FIRM

_____ 3/31/22

EDWIN L. HEIM COMPANY **DATE**
By: CRAIG G. TIMOTHY, EIRC

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 12th day of April, 2022.

WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

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