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BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: KIRBY BUILDING SYSTEMS LLC **C2023-18**

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 Kirby Building Systems LLC (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 State of Delaware, with its principal place of business in Portland, Tennessee.
3. Respondent Firm did not possess a Certificate of Authorization (hereinafter "COA") prior to January 19, 2023, the date Respondent Firm's COA (COA# C06830) was activated.
4. State law requires a provider of engineering services to possess a COA in order to practice engineering or to offer to practice engineering in West Virginia.
5. Respondent Firm's application for a COA was received by the Board on January 19, 2023. On the application Respondent Firm self-reported that it had provided engineering drawings for pre-engineered buildings which it manufactured and which were to be erected or constructed by third parties in West Virginia.
6. 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 in West Virginia without the required COA.

7. The Board initiated Complaint Number C2023-18 at its regular meeting on March 21, 2023, and it was received and filed by the Board on said date.

8. The Complaint was served upon the Respondent Firm on or about March 23, 2023.

9. 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.

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

11. The Board has taken into account the following factors in reaching this settlement: the Response of Respondent Firm; the practice of engineering services did not pose a harm to the public; Respondent Firm applied for and received a COA and it 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.

12. 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

13. 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*.

14. Mark G. Specht, President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm, and he makes such admissions, knowingly, freely, voluntarily, and without any threat of harm or act of coercion, and after having the opportunity to consult with Respondent Firm's in-house counsel, Doug Wilner, Esquire, and outside counsel, Jeremy Godwin, Esquire of Moore & Van Allen, PLLC.

15. 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).

16. 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.

17. Respondent Firm admits that by providing engineering drawings for pre-engineered buildings which it manufactured and which were to be erected or constructed by third parties in West Virginia, Respondent Firm provided engineering services in West Virginia without the required COA.

18. It is unlawful for any firm to practice or offer to practice engineering, as defined by West Virginia Code §30-13-3(e), in the State of West Virginia without a COA. W. Va. Code §30-13-17.

19. 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).

20. 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).

21. 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.

22. 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 §30-13-17

when it provided engineering drawings for pre-engineered buildings which it manufactured and which were to be erected or constructed by third parties in West Virginia without the required COA.

23. 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.

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 RESPONDENT FIRM

Mark G. Specht, President of Respondent Firm, by affixing his signature hereon, agrees to the following on behalf of Kirby Building Systems LLC:

26. Respondent Firm is aware of its right to be represented by counsel in this matter and to pursue this matter through appropriate administrative and/or court proceedings, including their right to an administrative hearing before the Board, and after having the opportunity to consult with its counsel, Respondent Firm knowingly, freely, voluntarily, and without any threat of harm or act of coercion, waives its rights to a formal hearing and any subsequent appeal therefrom, and enters into this Consent Order to resolve Complaint C2023-18; provided the Board accepts the terms and conditions set forth in this Consent Order.

27. Respondent Firm admits it did not possess a Certificate of Authorization to practice engineering in the State of West Virginia when it provided engineering drawings for pre-engineered buildings which it manufactured and which were to be erected or constructed by third parties in West Virginia.

28. Based on the findings of fact set forth above, the legal citations set forth herein, and Respondent Firm's admission above, Respondent Firm admits it violated W. Va. Code §30-13-17 when it provided engineering drawings for pre-engineered buildings which it manufactured and which were to be erected or constructed by third parties in West Virginia and did not possess a COA.

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 C202318 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 the violation of practicing engineering without a Certificate of Authorization. The total civil penalty is Two Hundred and Fifty Dollars ($250.00).

3. The civil penalty imposed herein totaling Two Hundred and Fifty Dollars ($250.00) 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 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.

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.

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 Firm 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.

AGREED TO BY:

RESPONDENT FIRM

6/15/2023

KIRBY BUILDING SYSTEMS LLC **DATE**
By: MARK G. SPECHT, PRESIDENT

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 5th day of July, 2023.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

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