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WV REGISTRATION BOARD

BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: all About Homes.net **CASE NO. C2006-19**

FINAL OPINION AND ORDER

Pursuant to a hearing held before the West Virginia State Board of Registration for Professional Engineers, Leonard J. Timms, P.E., presiding, on the 20th day of March, 2007, the Board hereby makes the following Findings of Fact and Conclusions of Law:

1. Based on public information made available by the Secretary of State, there is no indication that all About Homes.net is a West Virginia corporation, and this Board has no evidence upon which to base a finding of the type of business organization under which Respondent is doing business.
2. The hearing on Complaint 2006-19 was duly noticed on February 1, 2007, and held on March 20, 2007. Exhibit 1.
3. Prior to disciplinary action being initiated by the Board, the Board's investigator sent a letter of inquiry to Respondent by certified mail dated November 2, 2006, to an address in Lavalette, West Virginia, which was returned as unclaimed. Exhibit 2.
4. Respondent was served with Complaint C2006-19 by certified mail dated November 20, 2006, to the same address in Lavalette, West Virginia. Exhibit 3.

5. The return receipt for said service was signed by Robert C. Thomas on November 27, 2006. Exhibit 3.
6. Respondent never responded to the Complaint after service of same, nor after the Notice of Hearing.
7. Respondent did not attend the hearing, did not request any continuance of the hearing, and did not provide any information regarding its failure to attend.
8. Respondent's failure to attend the hearing was without good cause.
9. While the allegations in the Complaint are deemed true due to Respondent's failure to file a response or otherwise provide any defense to the Complaint under the procedural rules of the Board (7 C.S.R. 2-2.5), the Board finds the allegations were conclusively proven.
10. Complaint 2006-19 is based on the Board's receipt of a set of plans for a home addition which involved a complex foundation and structural steel components, which was alleged to be the practice of engineering. Exhibit 4.
11. Respondent does not hold a Certificate of Authorization (COA) with the Board, which COA is required of all firms practicing engineering in West Virginia.
12. The Board, sitting as a hearing panel in the matter, has sufficient expertise regarding what constitutes the practice of engineering that independent expert testimony is unnecessary.

13. Based on a review of the plan in question (Exhibit 4), the Board finds that the design of the specialized foundation and the structural steel is of sufficient complexity to constitute the practice of engineering.

14. The Board incurred administrative expenses in the prosecution of this Complaint in the amount of Four-Hundred-Fifty dollars ($450.00).

CONCLUSIONS OF LAW

15. 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 pursuant to West Virginia Code §30-13-1 *et seq.*

16. West Virginia Code §30-13-22(c) authorizes the Board to proceed with a hearing without the attendance of the respondent.

17. Failure to file a response to the Complaint is deemed an admission of the factual allegations contained in the Complaint, and failure to file a response to not grounds for delaying hearing or other action on the Complaint. 7 CSR 2.2.5.

18. It is unlawful for any person to practice or offer to practice engineering in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. West Virginia Code §30-13-2.

19. 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. West Virginia Code §30-13-17.

20. Practicing engineering without a license, to which Respondent has admitted herein, is an action that would subject a person to discipline by the Board,

including a civil penalty up to $5000.00. 7 CSR 1.15.1.

21. Practicing or offering to practice engineering without a valid COA is an action that would subject a firm to discipline by the Board, including a civil penalty up to $5000.00. 7 CSR 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." West Virginia Code §30-13-21(b); *see also* West Virginia Code §30-13-21(d)(4).

23. Any civil penalty assessed as a result of a hearing must be paid within fifty (50) days after the decision becomes final. West Virginia Code §30-13-21(f).

24. The Board is authorized to assess administrative costs incurred in the performance of its enforcement or investigatory activities against any firm in violation of West Virginia engineering law, which costs must be paid to the Board by check or money order within a period of thirty (30) days from the date of the final order entered by the Board. West Virginia §30-13-21(d)(4), 7 C.S.R. 1.14.4.

25. This Final Opinion and Order is a matter of public record.

26. Orders of the Board may be enforced in the Circuit Court of Kanawha County. West Virginia Code §30-13-9(c) and 7 C.S.R. 2.5.2.

ORDER

On the basis of the foregoing the Board hereby **ORDERS** the following:

27. Respondent all About Homes.net, unless and until it qualifies for and receives a Certificate of Authorization from this Board, shall cease and

desist from performing any engineering work on currently pending projects, making appropriate arrangements for the termination and/or transfer of such work to an engineering firm licensed to practice in West Virginia.

28. Respondent all About Homes.net shall comply with any reasonable requests by the Board for additional information regarding any its projects conducted in West Virginia or through its West Virginia office and shall make any and all drawings, plans or other information requested by the Board available for inspection and copying within five (5) business days of the receipt of the request.

29. Respondent shall pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for practicing or offering to practice engineering without a license.

30. Respondent shall pay a civil penalty of $250.00 for practicing engineering in West Virginia without a certificate of authorization.

31. The civil penalties of five hundred dollars ($500.00) imposed herein shall be paid within fifty (50) days after the decision becomes final as evidenced by the date of the President's signature and shall be made payable to the WV P.E. Board, which shall transfer same forthwith to the general revenue fund of the State of West Virginia.

32. Respondent all About Homes.net shall pay administrative costs in the amount of Four-Hundred-Fifty Dollars ($450.00) within thirty (30) days from the date of entry of this Order, which amount shall be made payable to the WV P.E. Board and deposited to the appropriate Board account to cover the

costs of this enforcement action.

33. A copy of this Final Opinion and Order shall be served upon Respondent by certified mail within five days after entry by the presiding officer.

34. The sum and substance of the Complaint and this Final Opinion and Order, in part or in their entirety, shall be set forth in Board publications, on the Board website, and on the enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

35. If the civil penalties imposed herein are not timely paid, this Final Opinion and Order may be summarily enforced in the Circuit Court of Kanawha County upon application by the Board for the entry of a Judgment Order for the total amount of civil penalties and administrative costs imposed herein ($500.00), together with pre-judgment interest from the date of the President's signature hereon and post-judgment interest from the date of entry of the Judgment Order, which judgment shall be fully executable in accordance with applicable law.

36. Respondent may appeal the Final Opinion and Order in accordance with applicable law.

WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

By _____
Leonard J. Timms, P.E.
Board President and Presiding Officer

Date: 4/25/07