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BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

IN RE: JOSEPH N. HOWARD

C2008-14

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president, and its attorney, Nicole A. Cofer, Assistant Attorney General for the State of West Virginia (hereinafter "the Board") for the purpose of agreeing to disciplinary action to be taken against Joseph N. Howard (hereinafter "Respondent Howard"). 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 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.*
2. The Board determined that Respondent Howard had held West Virginia Professional Engineer license number 15847, which had expired in 2006.
3. While working on a project in Virginia, Respondent Howard was asked to supply sealed drawings of the structure. Because Respondent

Howard was not licensed in Virginia, he attempted to seal the drawings with the expired West Virginia Professional Engineer seal number referenced above signing his name over the word "West" in "West Virginia" to make the seal appear to be from the Commonwealth of Virginia.

4. On May 1, 2008, Respondent Howard explained to the Board via letter the circumstances described above.
5. The Board initiated a formal complaint on June 3, 2008, and Respondent Howard received the formal complaint on June 23, 2008.
6. On September 8, 2008 in the Commonwealth of Virginia, Respondent Howard pled guilty to the misdemeanor count of Unlawful Act of Practicing a profession or occupation without holding a valid license as required by statute or regulation (Case No. C08009311-00) and was fined Four Hundred Dollars (\$400.00).
7. On September 8, 2008 in the Commonwealth of Virginia, Respondent Howard pled guilty to the misdemeanor count of engaging in the practice of the profession or occupation of engineering without holding a valid license as required by statute or regulation (Case No. C08009310-00) and was fined Two Thousand Five Hundred Dollars (\$2,500.00).

8. Respondent Howard paid the fines and costs for both the aforementioned convictions on October 8, 2008.
9. On November 20, 2008, the Board amended its complaint against Respondent Howard to include the new information of the aforementioned convictions.
10. The Board-filed complaint against Respondent Howard alleged that Respondent Howard committed two separate actions likely to deceive, defraud or harm the public, two separate counts of misuse of seal, two counts of criminal conviction related to the practice of engineering and providing misinformation to the Board.
11. The amended complaint was mailed via certified mail to Respondent Howard's home address and was returned to the office as "not picked up" on December 30, 2008.
12. The Board made a second attempt to serve Respondent Howard with the amended complaint, sending it to his business address on December 30, 2008 and it was received by Respondent Howard on January 5, 2009.
13. Respondent Howard responded to the Board's complaint by letter dated January 22, 2009, which response was similar to that of May 20, 2008 which still made no reference to the second structure, admitting

that he had exercised "poor judgment" in using his expired West Virginia seal to seal documents in the Commonwealth of Virginia.

14. A hearing on this matter was noticed for January 27, 2009; this hearing was continued based on Respondent Howard's desire that he enters into this Consent Order.
15. Respondent Howard has waived his right to a hearing on this matter and waives other rights set forth in West Virginia Code § 30-13-1 *et seq.* and the procedural rules of this Board.
16. Respondent Howard agrees to accept an informal settlement of Complaint C2008-14.

CONCLUSIONS OF LAW

17. West Virginia Code § 30-13-21(a)(3) authorizes the Board to discipline any person who has been convicted of a crime which is directly related to the practice of engineering.
18. The Board is authorized to discipline any person who has engaged in conduct likely to deceive, defraud or harm the public. W.Va. Code § 30-13-21(a)(11).
19. The Board is authorized to discipline any person who has misused the West Virginia Professional Engineer seal. W.Va. § 30-13-21(a)(10).
20. West Virginia Code § 30-13-21(a)(12) authorizes the Board to discipline

any person who provides misinformation to the Board.

21. The Board may approve, defer or deny an application. 7 CSR 1-4.1.
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. The Board has the authority to levy fines and assess costs against persons. W.Va. Code § 30-13-21(b) and 7 CSR 1-15.
24. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.
25. The Board has the authority to assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity found in violation of its rules, which shall be paid to the West Virginia State Board of Registration for Professional Engineers by check or money order within a period of thirty (30) days from the date this Order is entered by the Board. 7 CSR 1-14.4.

CONSENT OF RESPONDENT

Respondent Joseph N. Howard, by affixing his signature hereon, agrees to the following:

26. Respondent Howard is aware of his right to be represented by counsel

and of his option to pursue this matter through appropriate administrative and/or court procedures, but Respondent Howard intelligently and voluntarily waives his right to do so.

27. Respondent Howard intelligently and voluntarily waives his right to service of the Complaint by certified mail and his right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
28. Respondent Howard admits that he improperly used his expired West Virginia Professional Engineer seal # 15847 on documents that he prepared in Virginia, in clear violation of West Virginia Engineering law.
29. Respondent Howard admits that he was convicted of two criminal counts in the Commonwealth of Virginia.
30. Respondent Howard admits his actions were likely to, and did, deceive, defraud or harm the public.
31. Respondent Howard admits that he did not disclosed the existence of the second building.
32. Respondent Howard accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under any duress, restraint or compulsion.

33. Respondent Howard acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
34. Should the Board not approve this Consent Order, presentation to and consideration of this Consent Order and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Order.
35. Respondent Howard acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, 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

36. On the basis of the foregoing, the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-13-22(b).
37. The Board **ORDERS** Respondent Howard to pay a civil penalty in the

amount totaling Four Thousand Dollars (\$4,000.00), Two Thousand Dollars (\$2,000.00) for each of the two (2) counts of misuse of a West Virginia Professional Engineer seal.

38. The Board **ORDERS** Respondent Howard to pay a civil penalty totaling Five Thousand Dollars (\$5,000.00), Two Thousand Five Hundred Dollars (\$2,500.00) for each of the two (2) counts of conduct likely to deceive, defraud or harm the public.
39. The Board **ORDERS** Respondent Howard to pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for the one count of providing misinformation to the Board.
40. The Board **ORDERS** that an application for reinstatement by the Respondent Howard not be considered for eighteen (18) months from the date of entry of this Order, at which time Respondent Howard must be in full compliance with this Consent Order and otherwise meet the requirements to submit an application for reinstatement for the Board's review.
41. The civil penalty imposed herein **must be paid in full and received by the Board no later than June 30, 2009** after Respondent Howard receives notice of the Board President's signature hereon, 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.

42. The Board **ORDERS** Respondent Howard to pay administrative costs in the amount of Three Hundred Eighty-five Dollars (\$385.00).
43. The administrative costs imposed herein **must be paid within thirty (30) days** of the date Respondent Howard receives notice of the Board President's signature hereon, such amount to be made payable to the W.Va. P.E. Board (Administrative Costs). This payment must be separate from the civil penalties imposed above.
44. Respondent Howard will not practice or offer to practice engineering in the State of West Virginia unless and until Respondent Howard holds a valid license issued by the Board, which license shall not be issued until Respondent has qualified for the same and paid the civil penalties and administrative costs imposed herein.
45. Respondent Howard will surrender the expired West Virginia Professional Engineer seal number 15847 to the Board within thirty (30) days of this Consent Order being entered by the Board.
46. Respondent Howard acknowledges this Consent Order and the underlying Complaint are public records and agree that the sum and substance of the Complaint and this agreement in part or in their entirety may be set forth in Board publications and on the Board

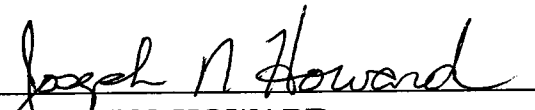
website and national enforcement databases, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

47. Any violation of the terms of this Consent shall be immediate cause for further disciplinary action by the Board.
48. 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 action except an action to enforce the terms of this Consent Order.
49. 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 Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment herein (\$10,385.00), 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.

50. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty and administrative costs agreed to herein.

51. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers 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:

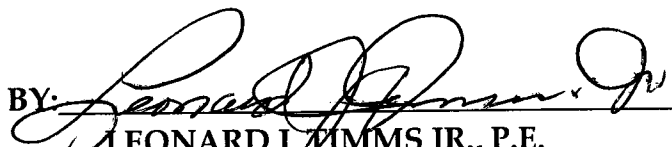

JOSEPH N. HOWARD

3/23/09
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this:

4th day of April, 2009.

WEST VIRGINIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS,

BY: 
LEONARD J. TIMMS JR., P.E.
BOARD PRESIDENT