

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
FLORIDA ENGINEERS MANAGEMENT )  
CORPORATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 99-3766  
 )  
CHARLES C. STOKES, P.E., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A hearing was held pursuant to notice, on March 23-24, 2000, by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Natalie A. Lowe, Esquire  
Florida Board of Professional Engineers  
1208 Hays Street  
Tallahassee, Florida 32301-0750

For Respondent: Charles C. Stokes, P.E., pro se  
35 Oats Road  
Cottonwood, Alabama 36320

STATEMENT OF THE ISSUES

The issues to be resolved are whether the Respondent engaged in misconduct by involving himself in a conflict of

interest and failing to take appropriate action; and whether Respondent was negligent in the practice of engineering.

PRELIMINARY STATEMENT

This case was initiated by the filing of a six-count Administrative Complaint against the Respondent. The Respondent requested a formal hearing and the case was referred to the Division of Administrative Hearings on September 7, 1999.

An Initial Order was sent out on September 9, 1999, and a unilateral response received on September 20, 1999 from the agency. A Notice of Hearing was sent out on October 8, 1999, setting the case for hearing on March 23 and 24, 2000 in Tallahassee.

On January 20, 2000, Petitioner filed a Motion to Deem Admitted, to which the Respondent filed a Motion to Strike on February 22, 2000. The motions were not heard because of the difficulties in contacting Respondent.

On March 17, 2000, the Petitioner filed an objection to Respondent's Motion for a Continuance, which was the first indication the Division had that Respondent had filed a Motion to Continue. The Administrative Law Judge requested Petitioner to forward a copy of the Respondent's Motion, and Petitioner's counsel forwarded Respondent's Motion for Continuance and Motion to Compel Discovery.

Upon receipt of these papers, the Motion for Continuance was considered and denied as untimely, having been brought to the attention of the Administrative Law Judge on March 17, 2000, with regard to a hearing scheduled for March 23, 2000. Continuances at this phase of proceedings are granted over objection only for severe emergencies.

The reason for the requested continuance was to permit Respondent to complete discovery in a case which was initiated in September and noticed in October, five months earlier. At hearing, the Respondent admitted he had not served discovery requests on Counsel for Petitioner. After hearing a re-recitation of the motion for continuance at hearing, there was no reason shown to continuing the proceedings.

During the two-day hearing, the Petitioner called three witnesses and entered 12 exhibits into the record. The Respondent testified in his own behalf; called one witness; and entered 24 exhibits into the record.

After the hearing, the Petitioner filed a packet of "supplemental" exhibits and motions. The exhibits are an attempt to place additional evidence into the record after the conclusion of the hearing and are disregarded. The accompanying motions are an attempt to raise the motion for continuances

again. It is untimely, and will not be considered having been mooted by the hearing.

After the hearing, the Petitioner filed a Notice of Voluntary Dismissal of Counts 2, 3, and 4, and a Proposed Recommended Order. This was read and considered. The Respondent filed a Amicus Curiae Brief, which was read and considered.

#### FINDINGS OF FACT

1. The Board of Professional Engineers is charged with regulating the practice of engineering pursuant to Chapter 455, Florida Statutes and Chapter 471, Florida Statutes.

2. The Respondent is charged with providing administrative, investigative, and prosecutorial services to the Board of Professional Engineers pursuant to Section 471.038(4), Florida Statutes (1997).

3. The Respondent is a licensed professional engineer in the State of Florida and holds license number PE 29985.

4. Mr. Dan Alford is the licensed community assistant manager for the Tropical Breeze Resort Association, hereinafter referred to as "the Association."

5. In 1997, the Association was seeking a professional engineer or an architect to rebuild a building that had been destroyed by Hurricane Opal.

6. The Respondent made a presentation to the Association. Because he was the low bidder and was recommended by a Board Member of the Association, the Respondent was selected.

7. In July 1997, Charles Stokes Engineering entered into an agreement with the Association to act as the Engineer of Record and Threshold Inspector for a project identified as the Tropical Breeze Resort (the project). The Respondent was the responsible engineer for Charles Stokes Engineering, a corporation.

8. In addition, the Respondent was to provide Construction Management services for the project.

9. His responsibilities included letting out bids for the project to subcontractors, overseeing the bidding process, and overseeing the work through construction.

10. In September 1997, the Petitioner notified the Association that Richardson Land Clearing was the apparent low bidder for Demolition and Site Preparation on the project.

11. In October 1997, the Petitioner informed the Association that Shoreline Construction and Engineering was the low bidder for construction of the seawall for the project.

12. In October 1997, the Association entered into a contractor agreement with Shoreline Construction and Engineering for construction of the seawall.

13. The Respondent signed on behalf of the contractor and indicated he was the director of Shoreline Engineering and Construction.

14. The Respondent listed his professional engineer's license number where the agreement requested a contractor's state license number.

15. In October 1997, the Association entered into a contractor agreement with both Richardson Land Clearing and Shoreline Construction for Demolition and Site Preparation.

16. The Respondent signed as the contractor for Richardson Landclearing and listed his professional engineer's license number where the agreement requested a contractor's state license number.

17. The Respondent also signed as the contractor for Shoreline Construction and Engineering and identified himself as director of the corporation.

18. The Respondent does not have a State of Florida license as a general contractor.

19. Shoreline Construction and Engineering, Inc. is registered in the state of Florida as an engineering business.

20. According to Ms. Jeannie Carlton, a member of Board staff, the Respondent is listed in Shoreline's application as the Secretary and the Registered Principal Officer.

21. The Respondent failed to disclose to the Association his position in Shoreline Construction and Engineering. He did not reveal any interest in Richardson Landclearing to the Association.

22. James O. Power, P.E., is a structural engineer who has been licensed in the state of Florida since 1947. He has over 47 years of structural engineering experience.

23. Since 1980, he has been a consultant to the Department of Business and Professional Regulation in various professions including engineering, architecture, and contractors.

24. Mr. Power was proffered and accepted as an expert in structural engineering.

25. According to James Power, P.E., the Respondent's obligation was primarily to his client, the Association, as the construction manager of the project.

26. In contrast, a contractor, within the limits of the contract, is free to do what is in his own best interest.

27. The Respondent's position as Construction Manager and his position as an officer of Shoreline Construction and Engineering, Inc. created a conflict of interest for Respondent with his client.

28. The Respondent's conflict of interest was not unavoidable. Respondent failed to:

(a) Disclose in writing to the Association the full circumstances of the possible conflict of interest,

(b) Assure the Association that the conflict would in no manner influence his professional engineering judgment or the quality of his services to the Association, and

(c) Promptly inform the Association of his business association interest or circumstances which might influence his judgment or quality of this services.

29. The Construction Drawings, signed and sealed by the Respondent on July 16, 1998, were examined by Mr. Power.

30. The plans examined by Mr. Power contained many deficiencies.

31. The Respondent signed and sealed this set of engineering plans on July 16, 1998.

32. The Respondent testified in his own behalf. He indicated that plans examined by Mr. Power were prepared for various building officials and permitting authorities. Although they are sealed by the Respondent, they are not final plans, as changes were made to satisfy the objections of the various building officials. The plans examined by Power were sufficient to permit contractors to bid on the job and to obtain approval from the building officials and permitting authorities. However, the Respondent did not prepare and submit final



drawings until very late in the process. These plans were on a compact disk.

33. On July 18, 1998, the Respondent billed the Association for \$22,400, the amount agreed upon for a complete set of plans. However, this amount was not paid. The code to access the disk was not provided to the Association.

34. The Respondent testified regarding his relationship in Shoreline. He was hired by Shoreline after the Shoreline/ Association Contract to consult on clearing buried debris which was delaying construction.

35. The Respondent did not advise the Association of this relationship.

36. The Respondent testified regarding his signing of the contracts with Shoreline and Richardson. The Respondent's testimony was not credible.

37. Mr. Power identified several deficiencies regarding the plans submitted by the Respondent. The Petitioner says the plans introduced by the Respondent were not the final, approved plans, but a work in progress having been prepared and refined for the various permitting authorities. The Petitioner testified that such plans must be "sealed" to meet the requirements of the permitting authorities; however, Mr. Power testified that such plans should contain a stamp or comment

limiting their use. Mr. Power's testimony was credible regarding the necessity for such a caveat.

38. The Association never paid for the finished drawings.

39. The final drawings are on a compact disk which cannot be opened without the password. Testimony conflicts about whether the password was provided to the Association. However, this is immaterial because the Association has not paid for the plans. There is no reason for the Respondent to open them and make them usable by the Association.

40. Although the plans introduced at hearing were not complete, they should have contained details regarding the column system and beam system for the second story if they did not carry a use limitation clearly stated on the plans.

41. Mr. Power testified regarding the deficiencies of the column system and the beams on the second floor connecting to the columns. His testimony was credible. The element of the Respondent's design were insufficient.

42. In summary, the Petitioner showed that the Respondent improperly represented parties whose interest were or could be conflicting. This was not necessary and should have been avoided.

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case.

44. The Petitioner must prove the charges contained in its Administrative Complaint by clear and convincing evidence.

45. The Respondent engaged in misconduct by failing to disclose his position in Shoreline Construction and Engineering prior to signing a contract with the Tropical Breeze Resort.

46. The Respondent engaged in misconduct when he involved himself in a conflict of interest and failed to take the steps outlined in Rule 61G15-19.001(6)(f), Florida Administrative Code.

47. The Board defines misconduct in the practice of engineering in Rule 61G15-19.001(6)(f), Florida Administrative Code, to include the following:

becoming involved in a conflict of interest with and employer or client, without the knowledge and approval of the client or employer, but if unavoidable a professional engineer shall immediately take the following steps:

1. Disclose in writing to his employer or client the full circumstances as to a possible conflict of interest; and
2. Assure in writing that the conflict will in no manner influence the professional engineer's judgement or the quality of his services to his employer or client; and

3. Promptly inform his client or employer in writing of any business association, interest or circumstances which may be influencing his judgement or the quality of his services to his client or employer.

48. Counts 2, 3, and 4 were voluntarily dismissed. The Respondent's designs of the first floor columns and beams for the second story were deficient as alleged in Count 6. This constitutes a violation of Section 471.033(1)(g), Florida Statutes.

#### Mitigation

49. The Respondent testified that he had been and continued to be seriously ill with an infection of the sinuses which had debilitated him. This had impacted his work forcing him to severely limit his practice.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED:

That the Board of Professional Engineers enter its final order revoking the Respondent's license.

DONE AND ENTERED this 2nd day of June, 2000, in  
Tallahassee, Leon County, Florida.

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STEPHEN F. DEAN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of June, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.