

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ENGINEERS MANAGEMENT)
CORPORATION,)
)
Petitioner,)
)
vs.) Case No. 02-4774PL
)
LESTER M. MAPLES, P.E.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 24, 2003, before Diane Cleavinger, a designated Administrative Law Judge of the Division of Administrative Hearings in Panama City, Florida.

APPEARANCES

For Petitioner: Douglas Sunshine, Esquire
Florida Engineers
Management Corporation
2507 Callaway Road, Suite 200
Tallahassee, Florida 32303

For Respondent: Alvin L. Peters, Esquire
Peters & Scoon
25 East Eighth Street
Panama City, Florida 32401

STATEMENT OF THE ISSUE

Whether Respondent's professional engineers' license should be disciplined.

PRELIMINARY STATEMENT

On October 22, 2002, an Administrative Complaint was filed by Petitioner against Respondent, Lester M. Maples, P.E. The complaint alleged that Respondent had engaged in negligence in the practice of engineering by failing to employ appropriate engineering standards in the design of fire protection plans for McArthur Elementary School (McArthur Elementary) and Longleaf Elementary School (Longleaf Elementary) in Pensacola, Florida. Specifically, Petitioner alleged that Respondent's license should be disciplined for violating Section 471.033(1)(g), Florida Statutes, relating to negligence in the practice of engineering, because the fire protection plans did not contain sufficient detail and clarity as required by Rule 61G15-32.003, Florida Administrative Code, and did not specify proper sealants where pipes penetrated fire barriers and reflected pipes penetrating walls at other than a 90 degree angle; and violating Section 471.033(1)(a), Florida Statutes, relating to rule violations by failing to date the plans as required by Rule 61G15-23.002, Florida Administrative Code. Respondent denied the allegations of the Administrative Complaint and requested a formal hearing on the charges.

At the hearing, Petitioner presented the testimony of three witnesses and offered seven exhibits into evidence. Respondent

testified in his own behalf and offered the testimony of two witnesses. Respondent also offered one exhibit into evidence.

After the hearing, Petitioner and Respondent filed Proposed Recommended Orders on May 16, 2003, and March 27, 2003, respectively.

FINDINGS OF FACT

1. At all times material to the allegations of this case, Respondent, Lester M. Maples, P.E., has been registered as a licensed engineer in the State of Florida, holding license number PE 10214. He has been licensed since 1964. There was no evidence that Respondent had been disciplined by the Florida Board of Professional Engineers in the past.

2. Panhandle Fire Protection, Inc. (Panhandle) is owned by Chris Thomas and is in the business of designing and constructing fire protection systems. Respondent is the engineer for Panhandle.

3. Respondent is the engineer of record for the fire protection plans for Longleaf Elementary and McArthur Elementary in Pensacola, Florida. Both plans were prepared in conjunction with Panhandle, the eventual contractor for the construction of the fire protection systems at both schools. The fire protection plans for both schools were signed, sealed, and dated by Respondent, with some revision dates also listed. The date does not appear immediately under Respondent's signature.

However, the technicality of placement of the date is at best a de minimus violation which does not warrant discipline. Since the plans are dated, the portion of the Administrative Complaint alleging that Respondent failed to date the plans should be dismissed.

4. Both plans were drawn by using data generated by a generally recognized computer program used for designing fire protection systems and generating the hydraulic calculations for such a system. Both plans show a fairly detailed layout of the fire protection piping and sprinkler heads at each school. Lengths of pipe, as well as diameter are shown. By looking at the plans, a person can generally trace the route of the pipes planned for each school and determine each system's construction. Both drawings are drawn to scale and otherwise appear to meet rule and building code criteria for such drawings. See Florida Building Code 104.2.1 and Rule 61G15-32.003(1), Florida Administrative Code. Indeed, both school's fire safety systems have been constructed and are in place at each school.

5. However, prior to construction, Gene Schmidt, P.E., was the engineer of record for the Escambia County School Board. Fire protection systems is not his area of specialty. While he was not responsible for the fire safety plans for the two schools, he performed a courtesy review of the fire protection

drawings and hydraulic calculations for Longleaf Elementary and McArthur Elementary.

6. After review, Mr. Schmidt felt that the hydraulic calculations could not be reconciled with the drawings. He felt the plans did not comply with NFPA 13 with which fire protection plans must comply in Florida. NFPA 13 6-1.1.1 only requires that the hydraulic reference points or nodes shown on the plan correspond or correlate with comparable reference points on the hydraulic calculation sheets for the drawings. Hydraulic reference points or nodes are any intersection of piping where the flow of water through the pipes can change. Nowhere in NFPA, rule or statute, is the manner for describing these intersections or sections of pipe prescribed.

7. Mr. Schmidt had difficulty in identifying the node points and section of pipe listed in the hydraulic calculations on the drawings. Once the method of description used by Respondent to describe these nodes and sections of pipe was explained to Mr. Schmidt, he could identify the reference point calculations on the drawings. Indeed, at the hearing, Mr. Thomas, a contractor, and another independent witness with expertise in engineering design principles, had no problem in tracing through the hydraulic reference points on the drawings. Both witnesses were of the opinion that the drawings contained sufficient information and continuity so that a person could

trace through or determine how the water would flow throughout the sprinkler system. On the other hand, Petitioner's expert witness had great difficulty in so doing. He was of the opinion that Respondent's drawings lacked continuity and a person could not trace through or follow the flow of water through the system because the hydraulic reference points were not all defined or locatable on the drawings. What was clear from the evidence was that these various experts had real disagreements over the terminology to be used for describing hydraulic reference points and the theory underlying one method of description over another. In any event, the evidence showed that Respondent's descriptive methods were valid even if somewhat unique and that the hydraulic reference points did correlate to the hydraulic calculations for the two projects. As indicated, both systems were built and accepted by the owner. Therefore, the portions of the Administrative Complaint related to the lack of detail or clarity in the drawings and the relation of the hydraulic reference points to the drawings should be dismissed.

8. The drawings do show pipes penetrating rated walls in corridors and around the kitchen at angles other than at 90 degrees. However, there is nothing in any rule, building code, or NFPA provision which prohibits such a design. Indeed, Petitioner's expert, who decried the angled design, has designed piping in such a manner. Additionally, the drawings do not

specify the type of sealant the contractor should use when a pipe penetrates a firewall. However, there is no code or rule requiring such a specification. Indeed, proper sealing of the pipes in the area of penetration of a firewall, as is proper sealing of windows and doors, is required by Section 104.2 of the Florida Building Code. However, such standard building code requirements are not required to be specified in the drawings since all such construction requirements must be met by the contractor and is not otherwise a special design detail to be specified on the drawings by an engineer. Therefore, the portions of the Administrative Complaint related to the sprinkler systems' pipes entering the wall at an angle other than 90 degrees and the failure of Respondent to specify the type of sealant to be used where pipes penetrate a firewall should be dismissed.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57, Florida Statutes.

10. Section 471.038(3), Florida Statutes, provides:

(3) The Florida Engineers Management Corporation is created to provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455 and this chapter. The management corporation may hire staff as necessary to

carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112, except that the board of directors and the staff are subject to the provisions of s. 112.061. The provisions of s. 768.28 apply to the management corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11). The management corporation shall:

(a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.

(b) Provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455, this chapter, and the contract required by this section.

11. Section 471.033, Florida Statutes, provides, in pertinent part:

471.033 Disciplinary proceedings.-

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

* * *

(a) Violating any provision of s. 455.227(1), s. 471.025, s. 471.031, or any other provision of this chapter or rule of the board or department.

* * *

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering.

12. Rule 61G15-19.001(4), Florida Administrative Code, addresses "negligence" as follows:

(4) A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in 471.033(1)(g), Florida Statutes, is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public. Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

13. Rule 61G15-23.002(1), Florida Administrative Code, provides in pertinent part:

A professional engineer shall sign his name and affix his seal to all plans, specifications, . . . or other documents prepared or issued by said registrant and being filed for public record. The date that the signature and seal is affixed as provided herein shall be entered on said plans, . . . immediately under the signature of the professional engineer.

14. Petitioner bears the burden of proof to establish by clear and convincing evidence the violations alleged in the

Administrative Complaint. Department of Banking and Finance v. Osborne, 670 So. 2d 932 (Fla. 1996).

15. In this case, Petitioner has not established by clear and convincing evidence that Respondent violated Chapter 471, Florida Statutes. Therefore, the Administrative Complaint should be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Board of Professional Engineers enter a final order dismissing the Administrative Complaint.

DONE AND ENTERED this 2nd day of July, 2003, in Tallahassee, Leon County, Florida.



DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of July, 2003.

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.