

Final Order No. BPR-2006-00625 Date: 1-31-06
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By

Brandon M. Nichel

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FEMC CASE NO.: 03-0079
DOAH CASE NO.: 04-3983PL
LICENSE NO.: PE 49148

JOSE G. PUIG, JR., P.E.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF PROFESSIONAL ENGINEERS (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 22, 2005, in Safety Harbor, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Petitioner's Exceptions to the Recommended Order, and (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Bruce A. Campbell, Esquire. Respondent was represented by Samuel B. Reiner II, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FILED
Florida Engineers Management Corporation
Clerk

CLERK

DATE

Jessie Baker
1-31-2006

RULINGS ON EXCEPTIONS

1. Petitioner's Exception One is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact in paragraph 29.

2. Petitioner's Exception Two is granted to the extent that the language in finding of fact paragraph 39 contains a conclusion of law in the following language: "[N]or did he have any intent to assist Mr. Naranjo in the unlicensed practice of engineering." The language is stricken because it appears to interpret Sections 471.033 and 455.227(1)(j), Florida Statutes, as requiring an intent to violate the statute to establish a violation. While the violation requires an intentional action, it does not include a *mens rea* element that the actor knowingly violated the statutes.

3. Petitioner's Exception Three to the conclusion of Law in paragraph 67 of the Recommended Order is approved based on the legal analysis with regard to Exception Four *infra*, and is replaced with the following language:

67. Petitioner met its burden of proving that Respondent violated Sections 471.033(1)(a) and 455.227(1)(j), Florida Statutes, by aiding and assisting an unlicensed person to practice engineering.

4. For the reasons stated in Petitioner's exceptions, Petitioner's Exception Four to the conclusion of law in paragraph

68 of the Recommended Order is approved in part, to delete "and he did not do anything intended to aid or assist in the unlicensed practice of engineering."

5. In view of the rulings on Petitioner's Exceptions Three and Four, paragraph 69 of the Recommended Order is deleted, and the following language is substituted:

69. Respondent violated Section 455.227(1)(j), Florida Statutes, by violating §471.033(1)(a), when he aided and assisted, Naranjo, an unlicensed person, to continue his engineering business.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order, as amended by the ruling regarding Petitioner's Exception Two, are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 471, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order, with the exception of paragraphs 67, 68 and 69, are approved and adopted and incorporated herein by reference.

3. Respondent violated Sections 471.033(1)(a) and 455.227(1)(j), Florida Statutes, when he aided and assisted

Naranjo, an unlicensed person, to continue his engineering business.

DISPOSITION

Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be REJECTED, and imposes the following discipline:

The licensee shall pay an administrative fine of \$2,000.00 and investigative costs of \$2,527.88 within 30 days. The fine and costs shall be made payable to the Florida Board of Professional Engineers, and sent to the Board at 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303.

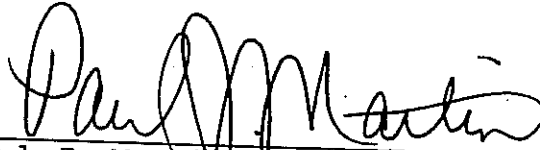
Respondent shall successfully complete a Board-approved course in Engineering Professionalism and Ethics within one year of the date the Final Order is filed. Prior to that date, Respondent shall submit to the Board a Certificate of Completion. It is the Respondent's responsibility to notify the Board that he has completed the course in a timely manner.

Respondent shall successfully complete the Study Guide which has been prepared by the Board of Professional Engineers and which will be furnished to Respondent, regarding the Engineering Practice Act, Chapter 471, Florida Statutes, and the Rules of the Board of Professional Engineers. Respondent shall complete and return the Study Guide within thirty days of the date on which a Final Order is filed, to the Board of Professional Engineers at 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303.

This Final Order shall take effect upon being filed with the Clerk of the FLORIDA ENGINEERS MANAGEMENT CORPORATION.

DONE AND ORDERED this 27th day of January, 2006.

BOARD OF PROFESSIONAL ENGINEERS

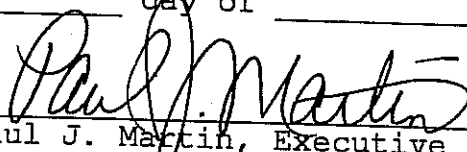


Paul J. Martin

Paul J. Martin, Executive Director
for Robert L. Matthews, P.E., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to JOSE G. PUIG, JR., P.E., c/o Samuel B. Reiner II, Esquire, 9100 S. Dadeland Blvd., Suite 1408, Miami FL 33156-7816; to Stuart M. Lerner, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Bruce A. Campbell, FLORIDA ENGINEERS MANAGEMENT CORPORATION, 2507 Callaway Road, Suite 200, Tallahassee FL 32303 and Lee Ann Gustafson, Department of Legal Affairs, PL-01 The Capitol, Tallahassee FL 32399-1050 this _____ day of _____, 2006.


Paul J. Martin, Executive Director
for Robert L. Matthews, P.E., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA ENGINEERS MANAGEMENT CORPORATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.