

Final Order No. BPR-2006-09454 Date: 12-14-06
FILED

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

By: Brandon M. Nibbel

2006 DEC 18 A 11:52
DIVISION OF ADMINISTRATIVE HEARINGS
FILED

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

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, and the Mandate from the District Court of Appeal, Third District in Case No. 3D06-298, on December 7, 2006, in Tallahassee, Florida, for the purpose of adopting the Administrative Law Judge's Recommended Order in the above-styled cause. Petitioner was represented by Patrick Creehan, Esquire. Respondent was represented by Samuel B. Reiner II, Esquire.

Upon review of the Recommended Order, the Mandate issued in Puig v. Florida Engineers Management Corporation, Case No. 3D06-298, the Board makes the following findings and conclusions.

FILED
Florida Engineers Management Corporation
Clerk
CLERK Jana Baker
DATE 12-14-2006

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order 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 are approved and adopted and incorporated herein by reference.

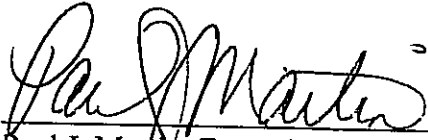
DISPOSITION

Upon a complete review of the record in this case, the disposition recommended by the Administrative Law Judge is adopted and the Administrative Complaint is dismissed.

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

DONE AND ORDERED this 12th day of December, 2006.

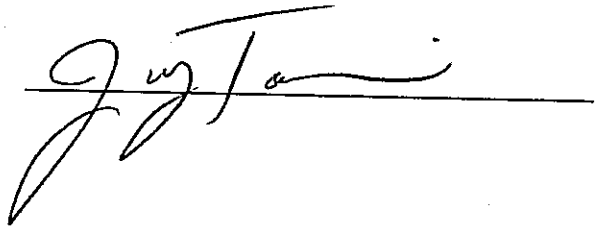
BOARD OF PROFESSIONAL ENGINEERS



Paul J. Martin, Executive Director
for Henn Rebane, PE., 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 Patrick Creehan, Esquire, 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 15th day of DECEMBER, 2006.

A handwritten signature in cursive script, appearing to read "Jose G. Puig, Jr.", is written over a horizontal line.

MANDATE

DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

DCA # 3D06-298

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

vs.

FLORIDA ENGINEERS
MANAGEMENT CORP.,

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FLORIDA BOARD OF
PROFESSIONAL ENGINEERS

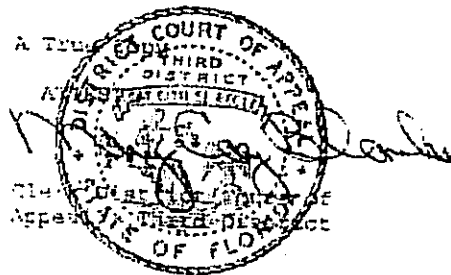
This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause in accordance with the opinion of this Court attached hereto and incorporated as part of this order, and with the rules of procedure and laws of the State of Florida.

Case No. 04-3983 PL, 03-79

WITNESS, The Honorable GERALD B. COPE, JR., Chief Judge of said

District Court and seal of said Court at Miami, this day November 3, 2006.



CC W/O OPINION: Samuel B. Reiner, II; Bruce A. Campbell
la

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FLORIDA BOARD OF PROFESSIONAL ENGINEERS

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 2006

DIVISION OF ADMINISTRATIVE HEARINGS

2006 DEC 18 A 11:52

FILED

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

**

Appellant,

**

CASE NO. 3D06-298

vs.

**

FLORIDA ENGINEERS MANAGEMENT CORP.,

**

LOWER TRIBUNAL

CASE NOS.03-79

Appellee.

**

04-3983PL

Opinion filed October 18, 2006.

An Appeal from the Florida Board of Professional Engineers.

Reiner & Reiner and Samuel B. Reiner, II, for appellant.

Bruce A. Campbell (Tallahassee), for appellee.

Before COPE, C.J., and FLETCHER and ROTHENBERG, JJ.

FLETCHER, Judge.

Jose G. Puig, Jr., P.E. (Puig) appeals from a final order of the Florida Engineers Management Corporation (FEMC) which rejected an administrative law judge's recommendation that an administrative complaint against Puig be dismissed. We reverse.

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On September 30, 2004, FEMC filed an administrative complaint against Puig, a licensed engineer, alleging violations of sections 471.033(1)(a)&(j) and 455.227(1)(a)&(j), Florida Statutes (2004), which prohibit sealing plans not prepared by, or under the supervision of, the engineer and assisting an unlicensed person in the practice of engineering. The specific charges against Puig were that he sealed plans to two projects under contract to Orlando Naranjo, whose license to practice engineering had been revoked in September of 2001. Puig denied the charges against him.

At an evidentiary hearing before an administrative law judge, Puig testified that he assumed the role of engineer of record on the Tora Emes and Manatee Village projects as a favor to Naranjo and without compensation. Puig affirmed that he reviewed the work done prior to his involvement, directed and instructed Naranjo and his employees in drafting work, and oversaw completion of the design work before finally affixing his signature and seal to the plans. He admitted, however, that all documents relating to the projects remained in Naranjo's offices which were located next to his own offices.

The administrative law judge issued a detailed order concluding that Puig "affirmatively established, through his own credible testimony, which was corroborated by the testimony of other witnesses, that the plans he signed and sealed . . . were

prepared under his responsible supervision, direction, and control," and "he did not do anything intended to aid or assist in the unlicensed practice of engineering." He, therefore, recommended that the complaint be dismissed. Upon review, FEMC rejected this recommendation and imposed penalties, including an administrative fine and costs.

A hearing officer's findings based on competent, substantial evidence may not be rejected by an administrative agency. Packer v. Orange County School Bd., 881 So. 2d 1204 (Fla. 5th DCA 2004). Nor may the agency avoid this responsibility by labeling the findings as conclusions of law. McMillan v. Broward County School Bd., 834 So. 2d 903 (Fla. 4th DCA 2003). Here, FEMC objected to the finding that Puig did not intend to assist Naranjo in the unlicensed practice of engineering deeming this to be a conclusion of law not supported by the language of Sections 471.033 and 455.227. Whether or not Puig intended to violate the statute, however, is not the point at issue. The only acts upon which an alleged violation of the statutes is predicated are the signing and sealing of the plans for the two projects contracted to Naranjo. The hearing officer, in its role as a finder of fact and based on competent substantial evidence, determined that the plans were properly sealed under Puig's active supervision and control when he assumed the role of engineer of record on the two projects.

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DEPR Agent

Because the acts, upon which the violations were predicated, were disproved, Puig could not be found to be in violation of the statutes.

We, therefore, reverse and remand with instructions that the administrative law judge's recommended order be approved.