

Final Order No. BPR-2007-01918 Date: **3-8-07**
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk
By: Brandon M. Nichol

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FMEC CASE NO.: 2004022050
DOAH CASE NO.: 05-0382

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FILED
DIVISION OF THE
ADMINISTRATIVE
HEARINGS

THE POOL PEOPLE, INC.,

Respondent.

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FMEC CASE NO.: 2005042579
DOAH CASE NO.: 06-1581PL
LICENSE NO.: PE 53856

MING ZEN HUANG, 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 February 22, 2007, in

FILED
Florida Engineers Management Corporation
Clerk
CLERK Jayna Baker
DATE 3-8-2007

Jacksonville, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Respondents' 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 Patrick Creehan, Esquire. Respondent was represented by David O. Batista, Esquire, 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.

RULINGS ON EXCEPTIONS

1. Respondents' exception to paragraph 6 of the Recommended Order is rejected. The exception requests the Board to rule on an evidentiary issue. Pursuant to the decision in *Barfield v. Department of Health, Board of Dentistry*, 805 So. 2d 1008 (Fla. 1st DCA 2001), the Board does not have substantive jurisdiction over evidentiary rulings by the Administrative Law Judge.

2. Respondent's exception requesting a remand to the Division of Administrative Hearings. The exception does not request the Board to reject a finding of fact based on the absence of competent substantial evidence, nor does it request the Board to make an alternative conclusion of law.

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 Board determines that the disposition recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Administrative Complaints are dismissed.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 6th day of March, 2007.

BOARD OF PROFESSIONAL ENGINEERS




Paul J. Martin, Executive Director
for Henn Rebane, PE., 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. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

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 THE POOL PEOPLE, INC., c/o David O. Batista, Esquire, Greenberg Traurig, P.A., East Las Olas Blvd., Suite 2000, Ft. Lauderdale FL 33301; to Stuart M. Lerner, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 and 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 9th day of MARCH, 2007.



Paul J. Martin

PoolPeople.rtf