

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,

Petitioner,

vs.

CHARLES EDWARD MARTIN,

Respondent.

Final Order No. BPR-2006-03433 Date: 5-22-06
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Tubel

DBPR Case No: 2000-02177

DOAH Case No: 05-3232PL

License No.: LS 3463

FINAL ORDER

THIS CAUSE came before FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 13, 2006, in St. Augustine, Florida, for the purpose of considering Administrative Law Judge Linda M. Rigot's Recommended Order, a copy of which is attached hereto as Exhibit A, in the above-styled cause and Petitioner's Exceptions to the Recommended Order, a copy of which is attached hereto as Exhibit B. Petitioner was represented by Assistant General Counsel Eric R. Hurst at the Board meeting. Respondent and his Counsel Wilson Jerry Foster, Esq., were both present at the Board meeting. The Board was represented by Assistant Attorney General Brian J. Stabley.

After a review of the complete record in this matter, including consideration of the Administrative Law Judge's Recommended Order, Petitioner's Exceptions, and the arguments of each party, the Board makes the following findings and conclusions:

DIVISION OF
ADMINISTRATIVE
HEARINGS

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RULINGS ON PETITIONER'S EXCEPTIONS

1. Petitioner filed untimely exceptions to the ALJ's Recommended Order on January 6, 2006.
2. Respondent did not file exceptions to the ALJ's Recommended Order, but did file a response to Petitioner's exceptions.
3. After reviewing the complete record, Petitioner's exceptions, and being duly advised on the premises, the Board rejected all of Petitioner's exceptions to the ALJ's Recommended Order.

BOARD'S EXCEPTIONS

4. Although the Board rejected Petitioner's exceptions to the ALJ's Recommended Order, the Board did reject or modify conclusions of law contained in the ALJ's Recommended Order.
5. The Board modified the conclusion of law in paragraph 15 of the Recommended Order by striking the words "revocation of licensure" and replaced the stricken language with "disciplinary." The Board struck the words "revocation of licensure" from paragraph 15 because the ALJ conducted a disciplinary proceeding and not a revocation of licensure proceeding. In striking "revocation of licensure" from paragraph 15 of the Recommended Order and replacing the stricken language with "disciplinary," the Board finds that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.
6. The Board modified the conclusion of law in paragraph 17 of the Recommended Order by striking the last two (2) sentences of paragraph 17. The

Board struck the last two (2) sentences of paragraph 17 because the last two (2) sentences are incorrect statements of law and also conflict with paragraph 24 of the Recommended Order. In striking the last two (2) sentences from paragraph 17 of the Recommended Order, the Board finds that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

7. The Board struck conclusion of law paragraph 19 in its entirety because it is an incorrect legal analysis as to whether or not the criminal offense of sexual battery relates or directly relates to the practice of surveying and mapping. In striking paragraph 19 of the Recommended Order, the Board finds that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

8. The Board modified the conclusion of law in paragraph 21 of the Recommended Order by striking the last sentence of paragraph 21 and replacing it with the following language: The criminal offense of sexual battery may be directly related or related to the practice of or the ability to practice surveying and mapping. The Board struck the last sentence of paragraph 21 of the Recommended Order because it considered mitigating factors that are not contained in Sections 455.227(1)(c) and 472.033(1)(d) of the Florida Statutes (1987-1989). The Board also struck the last sentence of paragraph 21 of the Recommended Order because it found that the criminal offense of sexual battery may be directly related or related to the practice of or the ability to practice surveying and mapping. In striking the last sentence of paragraph 21 of the Recommended Order and replacing the stricken language with new language,

the Board finds that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

FINDINGS OF FACT

9. The Administrative Law Judge's findings of fact as set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

10. There is competent, substantial evidence to support the Administrative Law Judge's findings of fact as adopted by the Board.

CONCLUSIONS OF LAW

11. The Board has jurisdiction of this matter pursuant to Sections 120.569 and 120.57(1), Florida Statutes, Chapter 472 of the Florida Statutes, and Chapter 61G17 of the Florida Administrative Code.

12. The Administrative Law Judge's conclusions of law that have not been rejected or modified are approved, adopted, and incorporated herein by reference.

13. There is competent, substantial evidence to support the Administrative Law Judge's conclusions of law as adopted by the Board.

RECOMMENDED PENALTY

14. The Administrative Law Judge's recommended penalty is approved and adopted by the Board in its entirety.

PENALTY


WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:

The Administrative Complaint filed against Respondent is 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 16th day of May, 2006.

FLORIDA BOARD OF PROFESSIONAL
SURVEYORS AND MAPPERS


Richard Morrison, Executive Director
on behalf of the Florida Board of
Professional Surveyors and Mappers

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 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION 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.

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 Respondent Charles Edward Martin c/o

Respondent's Counsel Wilson Jerry Foster, Esq., 1342 Timberlane Road, Suite 102-A, Tallahassee, Florida 32312; Linda M. Rigot, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Eric R. Hurst, Assistant General Counsel, Florida Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202; and Brian J. Stabley, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this _____ day of _____, 2006.
