

Final Order No. BPR-2006-04357 Date: 6/26/06
FILED

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

By: Sara M Wachman

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FEMC Case No.: 2004-14726
DOAH Case No.: 05-3340PL
License No.: PE 16739

ROBERT C. KANY, P.E.

Respondent.

FINAL ORDER

FILED
2006 JUN 27 P 13:55
DIVISION OF ADMINISTRATIVE HEARINGS
FILED

FILED
Florida Engineers Management Corporation
Clerk
CLERK Jana Baker
DATE 10-16-2006

THIS CAUSE came before the BOARD OF PROFESSIONAL ENGINEERS (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 20, 2006, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, a copy of which is attached hereto as Exhibit A, in the above-styled cause. Petitioner was represented by Bruce A. Campbell, Esquire. Respondent was represented by Daniel M. Green, Esquire.

Upon review of the Recommended Order, the argument of the parties, the exceptions filed by Petitioner and the response of Respondent, and Respondent's exception and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

1. Petitioner's Exception one is granted and paragraph 14 of the Recommended Order is deleted. This action is based on the

lack of evidence in the record defining "acceptable practice in the engineering community." The testimony on page 96 of the transcript describes the proper relationship between an engineer and draftsman. There is no testimony in the record the Respondent independently employed the draftsman, and there is no testimony that the circumstances of the individual project did not require a site visit by the engineers. Joint Exhibit 3 demonstrates that Respondent was never in a position to determine if a site visit was necessary on this particular project. The testimony of Mr. Ashraf was that an engineer can't be in responsible charge of a project if he never visited the site, especially if the project involves an existing structure. Transcript pages 69 and 84-85

2. Petitioner's Exception two is granted and the finding of fact in paragraph 15 of the Recommended Order is deleted. This action is based on the fact that there is no testimony concerning the "accepted practice of engineering in the community."

"Accepted practice in the engineering" is not a phrase used in Chapter 471, Florida Statutes, and cannot be used to negate the provisions of Chapter 471 and Rule Chapter 61G15, Florida Administrative Code. Rule 61G15-18.011(1), Florida Administrative Code, defines the acceptable practice under Chapter 471 in the definition of "responsible charge." There is no evidence in the record that Respondent's relationship with his draftsman meets the requirements of Rule 61G15-18.011(1); therefore, there is no evidence in the record that Respondent was properly performing engineering.

3. Petitioner's Exception three is granted, and the final sentence of paragraph 16 of the Recommended Order is deleted. Whether determined to be a finding of fact or a conclusion of law, this action is taken because the statement is completely inconsistent with the evidence presented. No evidence was presented that Respondent met the requirements of Rule 61G15-18.011(1) in his relationship with the draftsman.

4. Petitioners Exception four is granted and paragraph 28 of the Conclusions of Law is replaced with the following language:

28. Petitioner proved by clear and convincing evidence that Respondent affixed his seal and name to plans that were not prepared by him or under his responsible supervision, direction or control.

This action is taken because Rule 61G15-18.011(1)(a) requires an engineer in responsible charge must initiate concepts; weigh and investigate alternatives; select development, design standards and methods and the materials to be used. There is no evidence in the record that Respondent ever had an opportunity to undertake those engineering tasks because he was presented with a set of drawings to be checked and stamped. This legal conclusion is more reasonable than the legal conclusion set forth in paragraph 28 of the Recommended Order.

5. Petitioner's fifth exception, mislabeled exception four, is granted and paragraph 29 of the Recommended Order is changed to read as follows:

29. Petitioner proved by clear and convincing evidence that Respondent aided and assisted Mr. Thomas in a business that includes providing a design signed and sealed by Respondent as engineer, and therefore aided and assisted the unlicensed practice of engineering.

This action is taken because Joint Exhibit 3 describes Respondent's business practices, which do not meet the requirements of Rule 61G15-18.011. There is no contrary evidence in the record that establishes that Respondent's engineering practices meet the requirements of the rule.

6. Respondent's exception to correct the name of Respondent on page 3 of the Recommended Order from Frank Kany to Robert Kany is granted.

FINDINGS OF FACT

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

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

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, as amended by the exceptions granted herein are approved and adopted and incorporated herein by reference.

3. Respondent violated Sections 471.003(1)(a), (g) and (j), and Section 455.227(1)(j), Florida Statutes.

DISPOSITION

Based on the record before the Board and the fact that the evidence demonstrates that Respondent does not understand the laws and rules governing the practice of engineering in Florida, and his responsibilities as a licensed engineer, the license of ROBERT C. KANY is hereby REVOKED.

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

DONE AND ORDERED this 23rd day of June, 2006.

BOARD OF PROFESSIONAL ENGINEERS



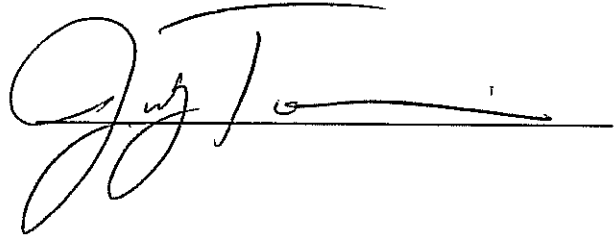
Paul J. Martin, Executive Director
for Henn Rebane PE, Chair

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, 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 ROBERT C. KANY, c/o Daniel M. Greene, Esquire, Kirwin & Morris, 338 West Morse Blvd, Winter park FL 32789; to Jeff B. Clark, 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, Esquire, FEMC, 2507 Callaway Road, Suite 200, Tallahassee FL 32303 and Lee Ann Gustafson, Senior Assistant Attorney General, PL01 The Capitol, Tallahassee FL 32399-1050 this 26th day of JUNE, 2006.

A handwritten signature in black ink, appearing to read "Jeff B. Clark", is written over a horizontal line. The signature is stylized and cursive.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RECEIVED
MAR 29 2006
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Case No. 05-3340 PL
2004014726

Petitioner,

v.

ROBERT C. KANY, P.E.,

Respondent.

RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER

Respondent files with the Florida Board of Professional Engineers his Exceptions to the Recommended Order entered in this case by the Division of Administrative Hearings on March 14, 2006.

EXCEPTION ONE

This exception is a clarification of the identity of Respondent's witness identified on page 3 of the Recommended Order. The Administrative Law Judge ("ALJ") incorrectly identifies a witness as "Frank Kany" instead of Respondent, "Robert Kany". The Final Order should contain this correction.

CONCLUSION

The ALJ's Findings of Fact are supported by competent, substantial evidence. The recommendation of an ALJ is entitled to substantial deference. The ALJ's Findings of Fact as contained within the Recommended Order should be accepted as true and correct and are adopted as the Findings of Fact of the Final Order and the ALJ's Conclusions of Law contained within the Recommended Order should be accepted as true and correct and adopted as the Conclusions of Law of the Final Order. The ALJ's Recommendation should be adopted.

FILED
Florida Engineers Management Corporation
Clerk
CLERK Jessie Baker
DATE 3-29-2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. Mail on Bruce A. Campbell, Esq., Florida Engineers Management Corp., 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303, this 27th day of March, 2006.



BRIAN P. KIRWIN

Fla. Bar No.: 867799

DANIEL M. GREENE

Florida Bar No.: 419710

KIRWIN NORRIS, P.A.

338 W. Morse Boulevard, Suite 150

Winter Park, Florida 32879

Ph: (407) 740-6600

Fax: (407) 740-6363

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Case No. 05-3340 PL
2004014726

Petitioner,

v.

ROBERT C. KANY, P.E.,

Respondent.

RESPONDENT'S RESPONSE
TO PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER

Respondent files with the Florida Board of Professional Engineers his Response to Petitioner's Exceptions to Recommended Order entered in this case by the Division of Administrative Hearings on March 14, 2006.

RESPONSE TO EXCEPTION ONE

Competent substantial evidence supports Finding of Fact 14 and Petitioner's exception is without merit. There is no requirement that the transcript contain the phrases "acceptable practice in the engineering community" or "independently employed." The Administrative Law Judge ("ALJ") is more than reasonable in using the elegant phrase "acceptable practice in the engineering community" as a synonym for the testimony contained in the record. (T-pp. 96, 125-127, 130-131). The ALJ is in the best position and has the authority to assess the facts as presented to him and draft the Finding of Facts as appropriate.

The Petitioner's contention that the phrase is not relevant cannot be taken seriously. The Petitioner charged Respondent with negligence. Community standards are at the core of any negligence claim. Moransais v. Heathman, 744 So.2d 973(Fla. 1999); CH2M Hill Southeast,

Inc. v. Pinellas County, 698 So.2d 1238 (Fla. 2d DCA 1997). The ALJ's interpretation and analysis of the facts presented completely support Finding of Fact 14. It is the ALJ's function in an agency proceeding to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Further, the record supports the phrase "independently employed". (T-pp.78-79, 122, 126-127). The Florida Board of Professional Engineers must follow the well-established principle that deference must be shown to the ALJ's findings of fact, which may not be rejected if supported by competent evidence. E.g., Greseth v. Department of Health and Rehabilitative Servs., 573 So.2d 1004 (Fla. 4th DCA 1991); Heifetz v. Department of Business Regulation, 475 So.2d 1277, 1281-82 (Fla. 1st DCA 1985).

The ALJ is entitled to draw permissible inferences from the evidence presented, Heifetz v. Department of Business Regulation, 475 So.2d 1277, 1281-82 (Fla. 1st DCA 1985), and findings of fact forthcoming from administrative triers of fact are entitled to as much weight and respect as jury verdicts, Gruman v. State Department of Revenue, 379 So.2d 1313 (Fla. 2d DCA 1980). Given the deference that must be given to a ALJ's findings of fact, and considering the applicable portions of the record in this cause, there is no basis to overrule this particular statement in Finding of Fact 14, to which Petitioner objects.

RESPONSE TO EXCEPTION TWO

Again, competent substantial evidence supports Finding of Fact 15 and Petitioner's exception is without merit. The phrase "acceptable practice in the engineering community" is completely within the purview of the ALJ to describe the testimony provided by the expert engineers in this matter. Testimony of witnesses Thomas Love, Darius Adams, and Mehdi Ashraf support Findings of Fact 15. It is the ALJ's function in an agency proceeding to consider

all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. The credibility of witnesses and weighing of evidence in an administrative proceeding is left to the ALJ. Further, this Finding of Fact is supported by competent substantial evidence in the transcript. (T-pp.78-79, 83-84, 96, 125-126). Given the deference that must be given to a ALJ's findings of fact, and considering the applicable portions of the record in this cause, there is no basis to overrule this particular statement in Finding of Fact 15, to which Petitioner objects.

RESPONSE TO EXCEPTION THREE

Petitioner takes issue with the ALJ's Finding of Fact number 16. Their exception is merely to a small portion of paragraph 16 and merely that the small portion is a "legal conclusion". Notably, Petitioner has failed to demonstrate that the remainder of Finding of Fact number 16 is not based upon competent, substantial evidence, or that the proceedings failed to meet the essential requirements of law. There is no basis, therefore, to overrule the ALJ's findings.

Further, the last sentence of Finding of Fact 16 is not a legal conclusion, but a finding of ultimate fact. Whether Robert Thomas was under Respondent's "responsible charge" is a defense to Petitioner's charge that Respondent was "aiding and assisting and unlicensed person to practice engineering". Contrary to Petitioner's position, it is not a legal conclusion, as the Respondent was not charged in the Administrative Complaint with not being in "responsible charge". Respondent was charged with "aiding and assisting and unlicensed person to practice engineering", "negligence in the practice of engineering", and "plan stamping" as that phrase is commonly known. The ultimate finding of "responsible charge" clearly required the ALJ to assess the relationship between Mr. Thomas and Respondent, including the demeanor when

questioned at the hearing about the relationship. Further, the testimony of Respondent and Respondent's experts, Mr. Adams and Mr. Love support the Findings of Fact 16.

Given the deference that must be given to a ALJ's findings of fact, and considering the applicable portions of the record in this cause, there is no basis to overrule this particular statement in Finding of Fact 16, to which Petitioner objects.

RESPONSE TO EXCEPTION FOUR

Petitioner takes issue with Conclusion of Law, Paragraph 28. Petitioner misstates the requirement of Rule 61G15-18.011 (1)(b). This Rule does not require the engineer of record to initiate concepts before implementation in a design. The engineer of record under the rule is required to review and approve proposed decisions prior to the implementation into the work that is constructed. It would be impossible for the engineer of record to review and approve proposed decisions prior to the implementation in drawings. The appropriate conclusion is the engineer reviews and approves decisions prior to the implementation into, and the construction of, a project.

Petitioner misleads the Florida Board of Professional Engineers with respect to subsection (b) of the rule. Subsection (b) only discusses the engineering decisions that must be made and other responsibilities of the engineer of record. The facts as presented to the ALJ completely support Conclusion of Law, Paragraph 28. Petitioner's exception should be ignored. Where issues "are determinable by ordinary methods of proof through the weighing of evidence and the judging of the credibility of witnesses," they are "solely the prerogative of the hearing officer as finder of fact." Holmes v. Turlington, 480 So.2d 150, 153 (Fla. 1st DCA 1985). Notable however, the Petitioner's proposed substitution attempts an end run of numerous other

findings of the ALJ some of which are not even contested, and all of which are amply supported by the record. Petitioner's proposed substitution must be denied.

RESPONSE TO EXCEPTION FIVE (FOUR)

Petitioner takes issue with Conclusion of Law, Paragraph 29. The ALJ is completely correct with respect to Conclusion of Law, Paragraph 29. Petitioner's inference that there was evidence presented at the final hearing with respect to the business Mr. Thomas operated is improper and misleading. Mr. Thomas was not a witness at the hearing nor was there any testimony or evidence with respect to the business Mr. Thomas operated. The ALJ was in the best position to interpret the testimony and evidence presented to draw the permissible inferences. The Florida Board of Professional Engineers cannot sit in the position of the ALJ and disregard the ALJ's inferences from the testimony and evidence presented. The ALJ is entitled to draw permissible inferences from the evidence presented, Heifetz v. Department of Business Regulation, 475 So.2d 1277, 1281-82 (Fla. 1st DCA 1985). The Florida Board of Professional Engineers must review the complete record and state with particularity that Findings of Fact set out in the Recommended Order are not supported by competent substantial evidence if the agency rejects any Findings of Fact. Petitioner expects the Board to make unsupported inferences related to Mr. Thomas' business relationship and how he conducted his business with the assistance of Respondent. However, there was no evidence or testimony presented discussing Mr. Thomas' business operations.

It is the ALJ's function in an agency proceeding to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. The credibility of witnesses and weighing of evidence in an administrative proceeding is left to the ALJ. Where

issues “are determinable by ordinary methods of proof through the weighing of evidence and the judging of the credibility of witnesses,” they are “solely the prerogative of the hearing officer as finder of fact.” Holmes v. Turlington, 480 So.2d 150, 153 (Fla. 1st DCA 1985). Petitioner’s proposed paragraph 29 would essentially create a new law requiring all draftsman to be subcontracted to licensed professionals. Given the frequency with which draftsman utilize licensed professionals to satisfy their obligations to owners, such a law should be enacted by the legislature and not be de facto applied in a disciplinary proceeding. Petitioner’s proposed substitution must be denied.

CONCLUSION

The ALJ's Findings of Fact are supported by competent, substantial evidence. The recommendation of an ALJ is entitled to substantial deference. Petitioner’s exceptions and conclusion should be rejected in its entirety. In Criminal Justice Standards and Training Commission v. Bradley, 596 So.2d 661 (Fla. 1992), the Florida Supreme Court acknowledged that:

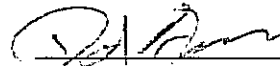
Although hearing officers are entitled to substantial deference “The agency in its final order ... may not reject or modify the findings of fact [of the recommended order] unless the agency first determines from a review of the complete record, and states with particularity in its order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of the law.” Section 120.57(1)(b)(10), Florida Statutes (1987). HRS “was not free to reweigh the evidence presented at the hearing, but rather was limited to determining whether some competent substantial evidence was presented which would support the hearing officer's conclusions.” South Fla. Water Management Dist. v. Caluwe, 459 So.2d 390, 394 (Fla. 4th DCA 1984)(citations omitted); see also Snejj v. Department of Professional Reg., 454 So.2d 795 (Fla. 3^d DCA 1984) (where hearing examiner's findings based on competent substantial evidence, agency had no authority to reject examiner's findings and substitute its own findings).

The ALJ's Findings of Fact as contained within the Recommended Order should be accepted as true and correct and adopted as the Findings of Fact of the Final Order and the ALJ's

Conclusions of Law contained within the Recommended Order should be accepted as true and correct and adopted as the Conclusions of Law of the Final Order. The ALJ's Recommendation should be adopted as in the Final Order.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. Mail on Bruce A. Campbell, Esq., Florida Engineers Management Corp., 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303, this 27th day of March, 2006.



BRIAN P. KIRWIN
Fla. Bar No.: 867799
DANIEL M. GREENE
Florida Bar No.: 419710
KIRWIN NORRIS, P.A.
338 W. Morse Boulevard, Suite 150
Winter Park, Florida 32879
Ph: (407) 740-6600
Fax: (407) 740-6363

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Robert C. Kany, P.E.
Case Number 2004014726

Itemized Expenses:

1.	City Blue Reprographics Copied Plans	\$	101.70
2.	City Blue Reprographics Copied Plans		29.50
3.	Syed Mehdi Ashraf, P.E. Consultant review and expert report		1950.00
4.	Homer A. Ooten, P.E. Consultant review (mechanical and electrical) and report		1770.00
5.	City Blue Reprographics Appearance at deposition of Mr. Walker on June 1, 2005		5.95
6.	Syed Mehdi Ashraf, P.E. Preparation for Hearing, hearing and travel expenses		1079.48
7.	Homer A. Ooten, P.E.		938.18
8.	Accurate Reporters, Inc. Appearance fee at hearing		909.00
9.	Investigator's expense		547.00
	Total	\$	7,330.81

March 27, 2006

Via Facsimile Only

Bruce Campbell
Florida Board of Professional Engineers
2507 Callaway Road, Suite 200
Tallahassee, Florida 32303-5267

Re: **Florida Engineering Management Corporation vs. Robert C. Kaney, P.E.,
FEMC Case Number 2004014726**

Dear Mr. Campbell:

I received the notice of the Florida Board of Professional Engineers' ("Board") meeting scheduled for April 20, 2006, advising that the above-referenced matter will be considered or heard at that time. I am puzzled as to the purpose of the meeting/hearing and whether Mr. Kaney and myself are required to attend. I reviewed Florida's Administrative Procedures Act, Chapter 120, Florida Statutes, and could not determine the procedure for the scheduled meeting. Please advise what the Board's purpose and intentions are at this meeting. My understanding of the APA, and the relevant rules, require the Board to issue a written final order and not conduct another hearing. Please contact me at your earliest convenience to discuss and explain this Board meeting/hearing.

Sincerely,


Daniel M. Greene

DMG:knh

cc: Robert C. Kaney
John Nagy

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CLERK Jana Baker
DATE 12-10-2006

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

v.

Case No. 05-3340PL
FEMC Case 2004014726

ROBERT C. KANY, P.E.,

Respondent.

**PETITIONER'S EXCEPTIONS TO
RECOMMENDED ORDER**

Petitioner files with the Florida Board of Professional Engineers these exceptions to the Recommended Order entered in this case by the Division of Administrative Hearings on March 14, 2006.

EXCEPTION ONE

Petitioner takes exception to Finding of Fact 14 which states:

14. It is acceptable practice in the engineering community for an engineer to work with a designer who drafts design documents and is independently employed. It is also acceptable practice in the engineering community for an engineer working with a design draftsman not to visit a particular project site if sufficient detail of the project is related to the engineer by the draftsman.

This finding of Fact is not supported by competent substantial evidence. In fact, a search of the transcript of the final hearing will not uncover a single use of the phrase "acceptable practice in the engineering community". A search of the transcript of the final hearing will not uncover a single use of the phrase "independently employed". The phrases are so vague as to be meaningless, but

use of these phrases can only confuse analysis of the facts of this case for the purpose of applying the law charged by the Administrative Complaint.

Appearing in the context of the Recommended Order, Finding 14 seems unnecessary and of limited relevance. A finding addressing the Administrative Complaint and evidence presented would provide the background facts that Respondent did not employ the draftsman alleged in the Complaint and did not visit the project sites for which the draftsman created designs. (J3; T – pp. 13-21)

Paragraph 14 should be deleted in its entirety.

EXCEPTION TWO

Petitioner takes exception to Findings of Fact 15 which states:

15. It is acceptable practice in the engineering community for a draftsman to design complete drawings and then present the drawings to an engineer for engineering review and approval as long as the draftsman is known to the engineer and the engineer is aware of the draftsman's skill and expertise.

This Finding suffers from the same lack of testimony using the phrase "acceptable practice in the engineering community". Again, the finding has no relevance except as a reaction to the facts in this case. Generally, this Finding does reflect Respondent's practice with respect to Mr. Thomas, as described in Finding 16.

Finding of Fact 15 should be deleted in its entirety:

EXCEPTION THREE

Petitioner takes exception to the last sentence of Finding of Fact 16, which states:

This process meets the "responsible charge" standard.

Although included within a paragraph of facts the last sentence of Finding 16 is a legal conclusion. It is a legal conclusion that is not supported by any competent substantial evidence in the record and conflicts with the plain meaning of the words of Rule 61G15-18.011(1), Florida Administrative Code.

EXCEPTION FOUR

Petitioner takes exception to Conclusion of Law, Paragraph 28. This Conclusion may suffer from the fact the Recommended Order does not fully recite Rule 61G15-18.001(1) – leaving out subsection (b) that discusses the selection and comparison of alternatives to be considered. The Recommended Order erroneously accepts after-the-fact review of a design as the equivalent of initiation of concepts before implementation in a design, and supervision of the process up to the point of drafting. Paragraph 28 should be replaced with a conclusion:

28. Petitioner proved by clear and convincing evidence that Respondent affixed his seal and name to plans that were not prepared by him or under his responsible supervision, direction or control.
(Petitioner's revision)

EXCEPTION FOUR

Petitioner takes exception to Finding of Fact 29 which states:

29. There is no evidence that supports the allegation that Respondent aided or assisted Mr. Thomas in the unlicensed practice of engineering.

The findings of fact are deficient in that they do not contain sufficient findings to discuss the evidence presented at the final hearing with respect to the

business Mr. Thomas operated. The findings do make it clear that Respondent did not have a business relationship with the property owners. It must be inferred therefore that he aided Mr. Thomas's business relationship. It must also be inferred that Mr. Thomas's business relationship included obtaining the engineer seal that Respondent provided. As a matter of law, a business that offers to provide or does provide design with an engineering seal is the practice of engineering. Therefore, Paragraph 29 should be revised to read:

29. Petitioner proved by clear and convincing evidence that Respondent aided and assisted Mr. Thomas in a business that include providing a design signed and sealed by Respondent as engineer, and therefore aided and assisted the unlicensed practice of engineering.
(Petitioner's revision)

CONCLUSION

Adoption of the foregoing exceptions will result in a Final Order with one violation of Section 471.033(1)(g), Florida Statutes for negligence in the practice of engineering, with a penalty range from a reprimand and two years probation to a five year suspension and ten years probation; and an administrative fine from \$1,000.00 to \$5,000.00. The Final Order would also include two violations of Section 471.033(1)(j), Florida Statutes for plan stamping, with a penalty range from a reprimand and one year probation to a one year suspension and two years probation; and an administrative fine from \$1,000.00 to \$5,000.00. The Final Order would also include two violations of Sections 471.033(1)(a) and 455.227(1)(j), Florida Statutes, by aiding and assisting an unlicensed person to practice engineering, with a penalty range from a reprimand and two years

probation to a one year suspension; and an administrative fine from \$1,000.00 to \$5,000.00. The appropriate penalty for the violations in this case must consider Respondent's unrepentant testimony that he has provided assistance to unlicensed individuals through long-standing and common practice that is the antithesis of supervision, direction or control.

March 16, 2006
Date

Bruce A. Campbell
Bruce A. Campbell
Florida Engineers Management Corporation
2507 Callaway Road, Suite 200
Tallahassee, FL 32303-5267
Ph (850) 521-0500
Florida Bar No. 191163

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Exceptions has been furnished to the attorney for Respondent by U. S. Mail to Daniel M. Greene, Kirwin Norris, 338 W. Morse Boulevard, Suite 150, Winter Park, Florida, 32789, on the 16 day of March, 2006.

Bruce A. Campbell
Bruce A. Campbell