

Final Order No. BPR-2006-04829 Date: **7-10-06**
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk
By: Brandon M. Nichol

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FILED
2006 JUL 13 A 10:42
DIVISION OF
ADMINISTRATIVE
HEARINGS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FEMC Case No.: 2004032677
DOAH Case No.: 05-4270PL
License No.: PE 10214

LESTER M. MAPLES, 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 15, 2006, in Tampa, 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 Timothy Qualls, Esquire.

FILED
Florida Engineers Management Corporation
Clerk
CLERK Janna Baker
DATE 7-10-2006

Upon review of the Recommended Order, the argument of the parties, Respondent's Exceptions and Petitioner's Response, Petitioner's Exception and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULING ON EXCEPTIONS

1. Respondent's exception to paragraph 21 of the Recommended Order is rejected. The finding by the Administrative Law Judge is supported by competent substantial evidence and correctly interprets the provisions of Chapter 471, Florida Statutes.
2. Respondent's exception to paragraph 22 of the Recommended Order is rejected. The finding by the Administrative Law Judge is supported by competent substantial evidence and correctly interprets the provisions of Chapter 471, Florida Statutes.
3. Respondent's exception to paragraph 32 of the Recommended Order is rejected. The finding by the Administrative Law Judge is supported by competent substantial evidence and correctly interprets the provisions of Chapter 471, Florida Statutes.
4. Respondent's exception to paragraph 28 of the Recommended Order is rejected. The finding by the Administrative Law Judge is supported by competent substantial evidence and correctly interprets the provisions of Chapter 471, Florida Statutes.
5. Respondent's exception to paragraph 11 of the Recommended Order is rejected. The finding by the Administrative Law Judge is supported by competent substantial evidence and correctly interprets the provisions of Chapter 471, Florida Statutes.
6. Respondent's exception to paragraph 34 of the Recommended Order is rejected. Paragraph 34 contains part of the Administrative Law Judge's legal analysis and the exception is not well taken.

7. Respondent's exception in paragraph 8 of his exceptions does not identify a paragraph of the Recommended Order, but is a conclusory paragraph and is rejected to the extent that it incorporates the previous exceptions in Respondent's motion.

8. Petitioner's exception to the Recommended Order is rejected. The exception addresses evidence not in the record.

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

The recommended dismissal of Count One is accepted and Count One is dismissed. Respondent is found to have violated Sections 471.023 and 471.033(1)(a) as alleged in Count Two of the Administrative Complaint. The Administrative Law Judge did not impose a penalty set forth in the disciplinary guidelines promulgated by the Board. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the license of LESTER M. MAPLES is hereby **REPRIMANDED**.

The licensee shall pay an administrative fine of \$1,000.00 within 30 days. The fine 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.

The license of LESTER M. MAPLES is placed on probation for two years. Respondent shall submit to the Board a list of all projects completed by the Respondent at six, 12 and 18 month intervals from the date that the Final Order is filed with the Agency Clerk. A FEMC Consultant will select two projects from the list for review. Respondent is responsible for promptly furnishing any set of completed plans (signed, sealed and dated) and calculations requested by the Consultant. Respondent is also responsible for the Consultant's fees for reviewing the projects, and shall remit payment by check or money order made payable in the name of the Board's Consultant and shall remit said payment to the Florida Engineers Management Corporation within thirty (30) days from the date of invoice. Should the Consultant return an unfavorable report concerning Respondent's projects, that report shall be submitted to the Probable Cause Panel for determination of whether additional disciplinary proceedings should be initiated.

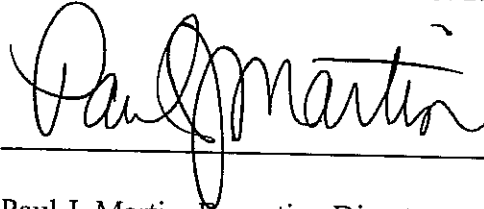
RULING ON MOTION TO ASSESS COSTS

The Board considered the Petitioner's Motion to Assess Fees in this matter and according to its statutory mandate set forth in §455.227(3)(a), Florida Statutes, costs in the amount of \$916.30 shall be submitted to the Board within 30 days from the date this Final Order is filed.

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 July, 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 LESTER M. MAPLES, P.E., 1616 Missouri Avenue, Lynn Haven FL 32444 and c/o Alvin Peters, Esquire, 25 East 8th Street, Panama City FL 32401; to Harry L. Hooper, 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, Esquire, FEMC, 2507 Callaway Road, Suite 200, Tallahassee FL 32303
this _____ day of _____, 2006.

CLERK

DATE

John Bata
4-13-2006

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

v.

CASE NO.: 05-4270PL

LESTER M. MAPLES, P.E.,

Respondent.

**RESPONDENT'S EXCEPTIONS TO
RECOMMENDED ORDER OF JUDGE HARRY L. HOOPER**

COMES NOW LESTER M. MAPLES, P.E., by and through his undersigned attorney and files with the Florida Board of Professional Engineers these Exceptions to the Recommended Order entered in this case by the Division of Administrative Hearings, Administrative Law Judge Harry L. Hooper on March 31, 2006.

1. With regard to paragraph 21, Panhandle Fire Protection, Inc., through its President, Chris Thomas, was not engaged in the practice of engineering. The finding of facts set forth in paragraph 21 that Panhandle is practicing engineering lacks any reference to any citation to the record or reference to the transcript. Contrary to the finding that Panhandle was practicing engineering, Mr. Thomas testified that as a licensed sprinkler contractor II he performed the role of draftsman. Specifically, Mr. Thomas testified "well I'm a draftsman and Lester just overviews everything." (Page 139, Lines 2-3.) Additionally, Mr. Maples continues to perform the actual "engineering:" "I spend hours going over plans that he draws and maybe, whoever the technician is who puts data into the computer to come up with the hydraulic calculations. I spend hours going over those things. And it's very rarely, rarely ever a job that he puts out

that I don't require him to do many many changes on before I will sign off on it." (Page 144, Lines 4-11.)

2. With regard to paragraph 22, paragraph 22 correctly finds that Mr. Maples was not an employee of Panhandle and that he was paid for individual jobs and had done so over the course of several years. However, paragraph 22 mistakenly concludes that "Mr. Maples was practicing engineering through a corporation that had no certificate of authorization." In fact, the weight of the evidence showed that Mr. Maples was practicing engineering on his own and providing his services as a consultant or contractor to Panhandle.

3. With regard to paragraph 32, a conclusion of law that Mr. Maples was designing "though (sic) a company that did not have a certificate of authority under section 417.023," there is no factual basis for this conclusion of law. Florida Statute 471.023(1) provides that engineering services offered to the public by licensees who are "agents, employees, officers or partners is permitted only if the business organization possess a certification issued by the management corporation." The factual findings in this case fail to come to the conclusion that Mr. Maples was an agent, employee, officer or partner in Panhandle Fire Protection. In fact, the factual findings specifically concluded in paragraph 22 that Mr. Maples was "not an employee of Panhandle." Without a factual finding that Mr. Maples was an agent, employee, officer or partner there is no factual basis for the legal conclusion in paragraph 32 that Mr. Maples was providing engineering services through a company that did not have a certificate of authority.

4. Although paragraph 28 of the conclusions of law correctly identifies the

legal principle that grounds proven must be those specifically alleged in the administrative complaint, see Cottrill v. Department of Insurance, 685 So. 2d. 1371, 1372 (Fla. 1st DCA 1987), the complaint in this case refers to only two allegations on the certificate of authority issue neither of which was proven with adequate evidence to constitute a basis for discipline.

5. One of the allegations is in paragraph 11 to the effect that fire protection documents were signed and sealed but had no title block showing a separate address for Mr. Maples. The other allegation in paragraph 12 of the complaint covered the July 7, 2004 letter signed by both Mr. Thomas and Mr. Maples to the Florida Engineering Management Corporation.

6. With regard to paragraph 11, the Treasure Island Condominium document, the Administrative Law Judge specifically recognized that this document did not constitute a "Fire Protection Engineering document." (See paragraph 14 of the Recommended Order.) Therefore, paragraph 11 of the complaint in Count II was not proven and should not be a basis for the conclusion of law in paragraph 28 of the Recommended Order law that Maples practiced engineering without a certificate of authority. In addition, the letter on the stationery of July 7, 2004, was found by the Administrative Law Judge to constitute "only a scintilla of evidence" and was not considered by the Administrative Law Judge as sufficient to meet the Board's burden of proof. Therefore, the items specifically alleged in the administrative complaint—the draft drawings and the July 7, 2004 letter—were not proven and cannot constitute a basis for legal conclusion that Mr. Maples was violating the certificate of authority requirements.

7. With regard to paragraph 34, the legal conclusion that this case is similar

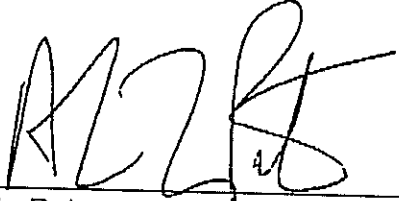
to Florida Engineering Corporation v. George, Case number 04-3224 (DOAH December 7, 2004) is incorrect because Mr. George, the engineer in that case, was actually an employee of Highland's Engineering, Inc. Apparently, Highland's Engineering, Inc. did not have a certificate of authority at the time that Mr. George worked for them. Mr. Maples, however, worked from himself as Lester Maples, P.E. and was not required to obtain a certificate of authority for practicing engineering in his own name.

8. In essence, the Administrative Law Judge's legal conclusion that Mr. Maples practiced engineering on behalf of Panhandle Fire Protection without that entity having a certificate of authority was not proven or specifically alleged in the complaint and the recommended order therefore violates the notice provisions of Cottrill v. Department of Insurance, 685 So. 2d. 1371, 1372 (Fla. 1st DCA 1987).

WHEREFORE the undersigned requests the Administrative Law Judge and the Florida Engineering Management Corporation to recognize the above exceptions to the recommended order and to deny and dismiss the Administrative action against Lester M. Maples, P.E.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by telefax this 13th day of April 2006, to Bruce A. Campbell, Esquire, (850) 521-0521 and by telefax (850) 921-6847 to Harry L. Hooper, Administrative Law Judge.



Alvin L. Peters

CLERK

DATE

Jenna Baker
4-5-2006

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

v.

Case No. 05-4270PL
FEMC Case No. 2004032677

LESTER M. MAPLES, P.E.,

Respondent.

**PETITIONER'S EXCEPTION 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 31, 2006.

EXCEPTION ONE

Petitioner takes exception to the last sentence of Conclusion of Law 37, which states, "Mitigating the circumstances is the lack of evidence demonstrating prior disciplinary action by the Board."

Rule 61G15-19.004(3), Florida Administrative Code, provides in part:

The fact that a Hearing Officer of the Division of Administrative Hearings may or may not have been aware of the below mentioned aggravating or mitigating circumstances prior to recommendation of penalty in a Recommended Order shall not obviate the duty of the board to consider aggravating and mitigating circumstances brought to its attention prior to the issuance of a Final Order.

In fact, a Final Order was entered in FEMC v. Maples, FEMC Case No 01-0083 (BPR-2003-02863), which imposed a reprimand for failure to enter the date that the signature and seal were affixed to a set of plans.

April 5, 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 Response to Initial Order has been furnished to the attorney for Respondent by U. S. Mail to Alvin L. Peters, 25 E. 8th Street, Panama City, Florida 32401, on the 5th day of April, 2006.

Bruce A. Campbell
Bruce A. Campbell