

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ENGINEERS MANAGEMENT )  
CORPORATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-4270PL  
 )  
LESTER M. MAPLES, P.E., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

This cause came on for formal hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on February 13, 2006, in Panama City, Florida.

APPEARANCES

For Petitioner: Bruce A. Campbell, Esquire  
Florida Engineers Management Corporation  
2507 Callaway Road, Suite 200  
Tallahassee, Florida 32303-5267

For Respondent: Alvin L. Peters, Esquire  
Peters & Scoon  
25 East 8th Street  
Panama City, Florida 32401

STATEMENT OF THE ISSUES

The issues are whether Respondent violated Section 471.033(1)(g), Florida Statutes (2003), by negligence in the practice of engineering, and whether Respondent violated

Sections 471.023 and 471.033(1)(a), Florida Statutes (2003), by practicing engineering through a business organization that did not, nor does it currently have, a Certificate of Authorization.

PRELIMINARY STATEMENT

In an Administrative Complaint filed October 28, 2005, Respondent Lester M. Maples (Mr. Maples), a professional engineer, was charged by the Florida Engineers Management Corporation (FEMC), before the Board of Professional Engineers (Board), with violating certain sections of Chapter 471, Florida Statutes. Mr. Maples filed an Election of Rights with the Board on November 16, 2005, demanding a formal hearing. In a response filed with the Board on November 21, 2005, Mr. Maples denied all of the allegations.

The matter was filed with the Division of Administrative Hearings on November 21, 2005. It was set for final hearing on February 13 and 14, 2006. The hearing was completed by the end of the day on February 13, 2006.

At the hearing, FEMC presented the testimony of the Mr. Maples and Edward J. Spahn, who is an expert in fire protection engineering. The FEMC offered Petitioner's Exhibit Nos. 1-5 and 5a into evidence, and they were admitted. Petitioner's Exhibit No. 1 was asserted to be a fire protection plan for the Treasure Island Condominiums dated January 27, 2004. Petitioner's Exhibit No. 5 is a fire protection plan for

the Treasure Island Condominiums that was submitted to the Bay County Building Official on January 19, 2005. The plan has a typed date of January 16, 2004, and a hand-written date of June 30, 2004. Undecipherable initials appear by the hand written date. It is the plan that was submitted to the Bay County Building Official for purposes of permitting.

Mr. Maples presented the testimony of Chris Thomas and Richard Lovejoy, an expert in fire protection engineering. Mr. Maples also testified on his own behalf. Mr. Maples offered Respondent's Exhibit Nos. 1 and 2 into evidence, and they were admitted. Respondent's Exhibit No. 1 is a fire protection plan for the Treasure Island Condominiums dated June 8, 2004; it is signed by Mr. Maples, and has the words "job site" stamped upon it. Respondent's Exhibit No. 2 is a fire protection plan for the Treasure Island Condominiums that is also dated June 8, 2004, and is also signed by Mr. Maples. It is essentially identical to Respondent's Exhibit No. 1, except that it does not have the words "job site" stamped upon it.

A Transcript was filed on March 6, 2006. After the hearing, Petitioner and Respondent filed their Proposed Findings of Fact and Conclusions of Law on March 14, and 16, 2006, respectively.

References to statutes are to Florida Statutes (2003) unless otherwise noted.

## FINDINGS OF FACT

1. Mr. Maples is a licensed professional engineer in the State of Florida. He holds license no. PE 10214, and he practices engineering in the Panama City, Florida, area. During all times pertinent Mr. Maples held an active license and practiced pursuant to it.

2. FEMC is charged with providing administrative, investigative, and prosecutorial services to the Board of Professional Engineers pursuant to Section 471.038, Florida Statutes.

3. The Board of Professional Engineers exists pursuant to Section 471.007 and is authorized to discipline engineers under its authority by Section 455.225.

4. During times pertinent, Mr. Maples provided engineering drawings to Chris Thomas (Mr. Thomas), who owned Panhandle Fire Protection, Inc. (Panhandle) of Lynn Haven, Florida. Mr. Maples maintained his engineering supplies in Mr. Thomas's office. Mr. Maples did most of his engineering work in his home in Lynn Haven, Florida. During times pertinent, Panhandle was his only client.

### Count One

5. At a time prior to January 27, 2004, Panhandle entered into an agreement with Bill Grimsley (Mr. Grimsley or Owner). Mr. Grimsley was building a 22-story building in Panama City

Beach, Florida, which was to be named Treasure Island Condominiums (the Condominiums). The agreement contemplated that Panhandle would address the fire suppression needs of the Condominiums.

6. In order to address the fire suppression needs of the Condominiums a fire protection plan using water sprinklers was required. The fire protection plan that was ultimately developed and submitted for permitting, FEMC's Exhibit No. 5, provided for the installation of more than 49 sprinklers. Although it is difficult to determine exactly how many sprinklers were to be utilized, the number was in excess of 1000.

7. The Condominiums included residential areas and garage areas. The residential areas were to be provided with a "wet" sprinkler system and the garage areas were to be provided with a "dry" sprinkler system. A "wet" system employs pipes which always have water in them. A "dry" system has no water until it is activated during a fire. A "dry" system is used where freezing might be a hazard. Thus the garage, which was not designed to be heated, had a dry system.

8. Mr. Thomas drafted a sprinkler system for the Condominiums using shop drawings of the Condominiums provided to him by the Owner. Mr. Maples reviewed and corrected Mr. Thomas's work. Thereafter, he sealed the drawings that were

FEMC's Exhibit No. 1 on January 27, 2004. Mr. Maples did not intend for these drawings to be the complete and final drawings for this project. They were for the use of the Owner. These drawings formed the basis of FEMC's complaint of negligence in the practice of engineering with regard to Mr. Maples.

9. Mr. Thomas, or his employees, made certain calculations, based on the drawings which set forth the schematic of the sprinkler systems. Drawings are the source documents for calculations. The calculations provide information about the system, including pipe diameter and length, and water pressures at various points. FEMC's Exhibit No. 2 are calculations which were signed by Mr. Maples, but were not sealed by him. These calculations are dated May 21, 2004.

10. The calculations that are FEMC's Exhibit No. 2 are in two parts. One part addresses the wet system for the residential areas and the other part addresses the dry system for the garage areas.

11. It was not proved by clear and convincing evidence that the calculations that are FEMC's Exhibit No. 2 correspond to FEMC's Exhibit No. 1, although they were clearly prepared for some iteration of the fire protection plan for the Condominiums. The probability is high that FEMC's Exhibit No. 2 was prepared for an iteration of drawings prepared subsequent to FEMC's Exhibit No. 1. For instance, Petitioner's Exhibit No. 1

reflects a six-inch pipe under a walkway leading to a standpipe on the first page. On Petitioner's Exhibit No. 5, a later iteration of the plans, the pipe is shown as a four-inch pipe, and Petitioner's Exhibit No. 2 shows calculations for a four-inch pipe.

12. The absence of calculations that are specific to the operative plans, FEMC's Exhibit No. 1, means that there is no record adequate for finding facts to support Count One.

13. FEMC's Exhibit No. 1 was never submitted to the authority having jurisdiction, the Bay County Building Official. FEMC's Exhibit No. 1 was not prepared with the intent that it was to be submitted to the authority having jurisdiction.

14. FEMC did not prove by clear and convincing evidence that FEMC's Exhibit No. 1 was a fire protection system engineering document as defined in Florida Administrative Code Chapter 61G15-32. This fact was admitted in FEMC's Proposed Recommended Order.

15. Accordingly, because the allegations of negligence in the Administrative Complaint are limited to violations of Florida Administrative Code Chapter 61G15-32, addressing fire protection system engineering documents, the specific allegations of Count One suggesting Mr. Maples failed to comply with Florida Administrative Code Rule 61G15-32.003 and National

Fire Protection Association 13 (NFPA 13), and the specific allegations suggesting Mr. Maples failed to comply with Florida Administrative Code Rule 61G15-32.004, were not proven.

Count Two

16. Count Two of the Administrative Complaint alleges at paragraph 11, that "the fire protection documents prepared for the Treasure Island Condominium contain a title block for Panhandle Fire Protection, with a designer, Chris Thomas. Respondent signed and sealed the documents but no title block reflects a separate address for him." As noted above, the document dated January 27, 2004, to which the quoted paragraph refers, is admittedly not a fire protection engineering document.

17. Count Two of the Administrative Complaint further alleges at paragraph 12, that, "Respondent signed a letter on the stationery of Panhandle Fire Protection, Inc., dated July 7, 2004, listing his capacity as 'Engineer,' in response to the notice of investigation of a complaint about the Treasure Island Condominium." This letter was a mere inquiry to the Florida Board of Professional Engineers and correctly noted that the complaint was based on an owner review set of plans rather than the permitted ones. The signers of the letter, Mr. Maples and Mr. Thomas, were both concerned about the allegations that had been made against them. This letter provides, at most, a



scintilla of evidence that Mr. Maples was practicing engineering through a business entity that does not have a Certificate of Authorization.

18. Panhandle has not been issued a Certificate of Authorization by the Board.

19. Mr. Thomas does not use any title that refers to himself as an engineer, including any title described by Section 471.031. He is a self-taught "sprinkler man," who has been in the business for 25 years.

20. The license held by Mr. Thomas, "Contractor II," was issued pursuant to Section 633.021, and permits him to design fire protection systems using 49 or fewer sprinkler heads.

21. Panhandle was engaged in the business of designing, as well as building the sprinkler system for the Condominiums, and the design had many more than 49 heads. Panhandle was practicing engineering as defined by Section 471.005(7). Specifically, Panhandle was practicing fire protection engineering.

22. Mr. Maples was not an employee of Panhandle. Rather, he was paid for each individual job that he did for Panhandle. Mr. Maples has worked for Mr. Thomas for several years and has participated in the production of over one hundred sets of fire protection plans. Mr. Maples was practicing engineering through a corporation that had no Certificate of Authorization.

## CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat. (2005).

24. Section 471.033(1)(a) authorizes the Board, on whose behalf the Corporation has prosecuted this matter pursuant to Section 471.038(3), to discipline an engineer proved guilty of negligence in the practice of engineering, which is specifically addressed in Section 471.033(1)(g). As noted above, no evidence was adduced which would permit a finding of guilty of violating Section 471.033(1)(g).

25. Section 471.033(1)(a), authorizes the Board, on whose behalf the Corporation has prosecuted this matter pursuant to Section 471.038(3), to discipline an engineer proved guilty of violating Section 471.023.

26. The charge in this case is penal in nature and must be strictly construed, with ambiguities being resolved in favor of the licensee. Lester v. Department of Professional and Occupational Regulations, 348 So. 2d 923, 925 (Fla. 1st DCA 1977) and Elmariah v. Department of Professional Regulation, 574 So. 2d 164 (Fla. 1st DCA 1990).

27. As the party asserting the affirmative of an issue, the Corporation has the burden of proof. Department of Transportation v. J.W.C Co., 396 So. 2d 778, 790 (Fla. 1st DCA 1981).

28. The 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).

29. Section 471.023, provides:

§ 471.023. Certification of business organizations.

(1) The practice of, or the offer to practice, engineering by licensees or offering engineering services to the public through a business organization, including a partnership, corporation, business trust, or other legal entity or by a business organization, including a corporation, partnership, business trust, or other legal entity offering such services to the public through licensees under this chapter as agents, employees, officers, or partners is permitted only if the business organization possesses a certification issued by the management corporation pursuant to qualification by the board, subject to the provisions of this chapter. One or more of the principal officers of the business organization or one or more partners of the partnership and all personnel of the business organization who act in its behalf as engineers in this state shall be licensed as provided by this chapter. All final drawings, specifications, plans, reports, or documents involving practices licensed under this chapter which are prepared or approved for the use of the business organization or for public record within the state shall be dated and shall bear the signature and seal

of the licensee who prepared or approved them. Nothing in this section shall be construed to mean that a license to practice engineering shall be held by a business organization. Nothing herein prohibits business organizations from joining together to offer engineering services to the public, if each business organization otherwise meets the requirements of this section. No business organization shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, nor shall any individual practicing engineering be relieved of responsibility for professional services performed by reason of his or her employment or relationship with a business organization.

30. Section 633.021 provides, in part, as follows:

§ 633.021. Definitions

As used in this chapter:

\* \* \*

(4) "Contracting" means engaging in business as a contractor.

(5)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section,

sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

\* \* \*

The definitions in this subsection must not be construed to include fire protection engineers or architects and do not limit or prohibit a licensed fire protection engineer or architect from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, persons certified as a Contractor I, Contractor II, or Contractor IV under this chapter may design fire protection systems of 49 or fewer sprinklers, and may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of not more than 49 sprinklers, notwithstanding the size of the existing fire sprinkler system. A Contractor I, Contractor II, or Contractor IV may design a fire protection system the scope of which complies with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

31. Section 471.005, provides as follows:

§ 471.005. Definitions

As used in this chapter, the term:

\* \* \*

(7) "Engineering" includes the term "professional engineering" and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services. A person who practices any branch of engineering; who, by verbal claim, sign, advertisement, letterhead, or card, or in any other way, represents himself or herself to be an engineer or, through the use of some other title, implies that he or she is an engineer or that he or she is licensed under this chapter; or who holds himself or herself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering shall be construed to practice or offer to practice engineering within the meaning and intent of this chapter.

32. As noted in paragraph 30 above, a licensed fire protection engineer may design any type of fire protection system. A Contractor II may only design systems of 49 or fewer heads. Thus, Mr. Maples was designing what he was authorized to design, but he did it through a company that did not have a Certificate of Authority under Section 417.023, to wit: Panhandle.

33. Without Mr. Maples' seal, the authority having jurisdiction, the Bay County Building Official, could not have approved Panhandle's fire protection plan for the Condominiums.

34. This case is similar to Florida Engineers Management Corporation v. George, Case No. 04-3224 (DOAH December 7, 2004). In that case, George was a licensed professional engineer who performed engineering services for Atlantic Vinyl Windows and Doors, Inc., through Highlands Engineering, Inc. The latter entity did not have a Certificate of Authority at the time George did the engineering work, although Highlands was eligible for a Certificate of Authority and eventually obtained one.

35. The Administrative Law Judge in the George case concluded that George violated Section 471.023, and it is likewise concluded in this case that Section 471.023, and thus Section 471.033(1)(a), was violated by Mr. Maples.

36. For a violation of Section 471.033(1)(a), the Board may impose discipline ranging from a reprimand and two years

probation to a one-year suspension; and an administrative fine from \$1,000 to \$5,000. Fla. Admin. Code R. 61G15-19.004(2)(s).

37. The Board may deviate from the guidelines listed above based on aggravating or mitigating circumstances. Fla. Admin. Code R. 61G15-19.004(3). No aggravating circumstances are present other than the testimony of Mr. Maples stating he has been practicing through Panhandle for eight or ten years. Mitigating the circumstances is the lack of evidence demonstrating prior disciplinary action by the Board.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the allegations under Count One be dismissed, that Mr. Maples be determined to be guilty of the allegation in Count Two, that he be reprimanded, and that he be placed on probation for two years.

DONE AND ENTERED this 31st day of March, 2006, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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this 31st day of March, 2006.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.