

Final Order No. BPR-2006-04828 Date: 7-10-06
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brenda M. Nish

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FEMC Case No.: 2005043405
DOAH Case No.: 05-4271PL
License No.: PE 10214

LESTER M. MAPLES, P.E.,

Respondent.

DIVISION OF
ADMINISTRATIVE
HEARINGS

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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 Jana Boyd
DATE _____

Upon review of the Recommended Order, the argument of the parties, Respondent's Exceptions and Petitioner's Response, 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 numbers 1 and 2 are rejected. The Administrative Law Judge ruled on Respondent's Motion to Dismiss at the hearing on this matter, denying said motion. Respondent was not denied due process.

2. Respondent's exception number 3 to paragraph 26 of the Recommended Order is rejected. The findings of the Administrative Law Judge are supported by competent substantial evidence, and the reason two pipes were not installed is irrelevant to the charges in the Administrative Complaint.

3. Respondent's exception number 4 to paragraph 27 of the Recommended Order is rejected. It is the role of the Administrative Law Judge to determine the credibility of witnesses, and the findings of the Administrative Law Judge are supported by competent substantial evidence.

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.

3. The Board further finds that the testimony demonstrated Respondent never visited the site of the project at issue in this case, and that Respondent shows no remorse for practice in violation of Chapter 471. 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.

4. The Board further finds that hydraulic calculations are the linch pin of a fire sprinkler system.

DISPOSITION

Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be rejected. WHEREFORE,

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

The licensee shall pay an administrative fine of \$5,000.00 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, to run concurrently with the probation imposed by the Board in DOAH Case No. 05-4270PL. 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 \$2,055.14 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



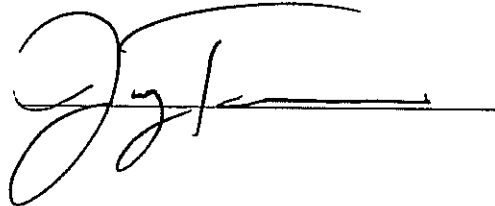
Paul J. Martin, Executive Director
for Henn Rebane, PE, Chair

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 11 day of July, 2006.

A large, stylized handwritten signature in black ink, appearing to be 'J. J. Campbell', written over a horizontal line.

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

v.

LESTER M. MAPLES, P.E.,

Respondent.

Case No. 05-4271PL
FEMC Case No. 2005043405

PETITIONER'S RESPONSES TO EXCEPTIONS
FILED BY RESPONDENT

Petitioner, Florida Engineers Management Corporation, responds to the Exceptions filed by Respondent May 5, 2006, to the Recommended Order of April 28, 2006, with the following arguments as to each similarly numbered exception.

1. The Judge denied Respondent's Motion to Dismiss at the hearing. (Transcript, page 11).
2. Respondent was not denied due process by any lack of specificity in the Administrative Complaint. Respondent argues that the Administrative Complaint should have alleged that isolated sentences of testimony, standing alone, were untruthful, deceptive or misleading. The Recommended Order follows the logic of this argument to an extent, making findings that paragraphs of the Administrative Complaint were not verbatim quotes of Respondent, and so, each paragraph considered alone was not proved to be untruthful, misleading or deceptive.

Respondent's argument does not address the actual Administrative Complaint, which charges only one offense. That offense combines five subjects of testimony, whether the words were uttered by Respondent, or presented in a question to which Respondent agreed. It is then alleged that the testimony is untruthful, deceptive or misleading because of conflicting testimony, or because of conflict between testimony and the lines and numbers on documents signed and sealed by Respondent, or because of conflict between that testimony and the physical reality constructed from the plans.

It would have been improper for the Judge to limit his analysis to pieces of testimony and ignore the whole story told by Respondent. The Judge got the proper result because the definition of the offense as alleged in paragraph 13 of the Administrative Complaint, includes expressing an opinion on an engineering subject without being informed as to the facts relating thereto.

3. Finding of Fact 26 is supported by competent substantial evidence in the testimony of the licensed fire protection contractor who employed the foreman. (Transcript pages 67, 71).

4. The Recommended Order accepts the testimony of an expert who testified personally in front of the Judge in this case. Thus, Finding of Fact 27 is supported by competent substantial evidence. The Judge did not have to consider testimony of an expert who testified at the earlier proceeding before a different judge.

May 11, 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 Responses to Exceptions 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 11th day of May, 2006.

Bruce A. Campbell
Bruce A. Campbell

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

v.

CASE NO.: 05-4271-PL

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 April 28, 2006. In support of these exceptions the undersigned would show as follows:

1. The Administrative Judge failed to rule on the Motion to Dismiss filed by the Respondent on the grounds that the Administrative Complaint did not specifically inform the respondent of the charges against him. Although Judge Hooper agrees that the Motion to Dismiss alleged "with good reason, that he was not adequately informed of a specific act," the judge never actually specifically rules on this issue. In fact, some of the conclusions of law indicate that there is ample basis for granting the motion. Specifically, in paragraph 35 Judge Hooper acknowledges that 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). The judge's

order further acknowledges that the complaint fails to identify by reference to a transcript any specific opinion that Respondent allegedly offered as misleading. The absence of this specific reference is not only a part of respondent's motion to dismiss, but is also conceded in the judge's order. (Paragraph 16 of the Recommended Order, "the statements do not cite with particularity to the Transcript").

2. In essence, the absence of specificity in the complaint left respondent at a procedural disadvantage and denied him due process of law. A fundamental concept of due process, even in the administrative context, is that the accused be fully, fairly and specifically informed of the nature of charges against him. Although Judge Hooper's order acknowledges and makes specific findings as to the lack of specificity in the complaint, he goes to the transcript and quotes for several pages statements by Mr. Maples and essentially compensates in his order for the absence of specific allegations in the Administrative Complaint. Due process, however, requires that the specific information be included in the front end of the process in the Administrative Complaint not provided at the end of the process in the judge's ruling.

3. Paragraph 26 was to the effect that a foreman sent by Mr. Thomas to install the system did not conclude that two parallel pipes were required. He installed only one. Although the record is uncontroverted that there was only one pipe mistakenly placed in the ceiling of this area of the project, there was no testimony to the effect of why that error occurred. Specifically, the finding that the foreman did not conclude two pipes were required does not logically support the conclusion that Lester Maples offered a sanctionable opinion. No foreman actually testified and so there is no factual basis for this finding. Certainly, the foreman himself may not be sufficiently

skilled and knowledgeable in the area of interpreting calculations and plans. Judge Hooper received no evidence nor did he make any factual findings as to the qualifications or skills of the workers who were working on the day this job was done. Mr. Maples' testimony to the effect that those skilled in the interpretation of sprinkler calculations and plans would know that the sum and substance of the plans and calculations require two 61 foot pipes is not undermined by the failure of the person working on the day this job was done to install the requisite pipes. For Judge Hooper to reach this conclusion, he should have required some evidence that the person who made the mistake on the day these pipes were installed was knowledgeable in the area of interpreting plans and calculations.

4. In paragraph 27, Judge Hooper makes the factual finding that an expert called by FEMC, Larry Simmons, stated "unequivocally" that he "could not determine that a second 61-foot long 1 and 1/4-inch pipe was called for by the plans." However, Judge Hooper makes no mention of Respondent's expert, Richard Lovejoy, who testified as follows:

Q. Now, we have focused on one segment of pipe that relates to node 25 to 30.

A. Correct.

Q. And in the calculations that are in evidence that relates to a 3-foot piece of pipe whereas it turns out it's 61 feet long –

A. When I saw that I said data entry problem. I said obviously it's an equivalent length to the 25 – the 20, 25 run. Physically it looked that way. So I assumed that unless the node was misplaced, there were two pieces of pipe.

Q. Do the calculations themselves indicate that sufficient water is essentially reaching the most demanding – the most demanding area?

A. Yes.

Q. Is there any concern in your mind as to whether or not the system would reliably function in the sense of being able to produce sufficient water pressure at the most remote area?

A. Not at all...

Q. If I am understanding your testimony, you knew when you looked at the plans the 3-foot segment of pipe on the plans was incorrect?

A. Well, you have a great deal of confidence. Because you look at the schematic, and you're looking at 20, 25, obviously 61 feet, and then you look at the same run of pipe in the way it's posted, it will appear to be the same way, the 25 to 31 run is a whole lot lower than that 3-foot.

Q. The 3 feet on the plan is wrong; is that correct?

A. On the calculations.

Q. On the plan that 3-foot run is incorrect. It does not exist is your testimony?

A. I can't answer that question. I can only restate what I have found. I have found that run 25 - 20 to 25 was 61 feet, and that was in the calculations. When I looked at 25 to 30, physically on the schematic, it looked to be the same length. I discovered in the calculations a 3-foot entry, and then surmised a 3-foot data entry error.

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.

PETERS & SCOON
Attorneys at Law

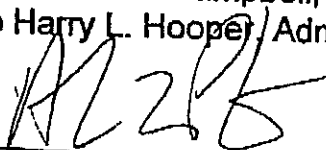
By: 

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Fla. Bar No.: 0473030

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by telefax this 5th day of May 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