

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

vs.

Case No. 14-2467

ALLAN WILLIAMS, P.E., AND ALLAN
WILLIAMS, P.E., d/b/a ABW
ENGINEERING,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case before J. D. Parrish, an Administrative Law Judge of the Division of Administrative Hearings, on August 1, 2014, by video teleconference at sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: John Jefferson Rimes, III, Esquire
Board of Professional Engineers
Suite B-112
2639 North Monroe Street
Tallahassee, Florida 32303-5268

For Respondent: Allan B. Williams, pro se
ABW Engineering
Suite 713
1000 South Semoran Boulevard
Winter Park, Florida 32792-5519

STATEMENT OF THE ISSUES

Whether the Respondent, Allan Williams, P.E., and Allan Williams, P.E., d/b/a ABW Engineering (Respondent or Williams), committed the violations alleged in the Administrative Complaint dated November 15, 2013, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Petitioner, Florida Board of Professional Engineers (Petitioner or Board), filed an Administrative Complaint against Respondent that alleged Williams did business through an entity that was not properly certified and authorized to do business as required by law. More specifically, Petitioner claimed that for the period March 2009 to June 2013, Respondent operated ABW Engineering while that entity was in a delinquent status and not authorized to do business. In response to the Administrative Complaint, Respondent denied the material allegations of fact and asserted that he does business as Allan Williams, P.E.

The case was referred to the Division of Administrative Hearings (DOAH) for formal proceedings on May 22, 2014.

Thereafter, by Notice of Hearing dated June 23, 2014, the case was scheduled for the hearing to be held on August 1, 2014.

Respondent filed an ex-parte request for a continuance on July 23, 2014. The request represented that Williams would be represented by an attorney and needed a continuance. An attorney

did not file a notice of appearance on Respondent's behalf. Petitioner opposed the continuance, and the parties filed various email exchanges that demonstrated Respondent previously announced he would be represented by counsel, but that no attorney had contacted Petitioner regarding the matter. An Order Denying Continuance was entered on July 29, 2014, that provided, in pertinent part:

In the event an attorney should file a notice of appearance for Respondent and comply with the rules regarding contacting opposing counsel to seek a continuance, the matter may be revisited.

At the hearing, Petitioner presented testimony from Wendy Anderson. Petitioner's Exhibits 1, 2, 4 through 6, and 8 through 12 were admitted into evidence. Respondent testified in his own behalf and presented Exhibits 1 and 2, which were received in evidence. The Transcript of the proceeding was filed with DOAH on August 13, 2014. Petitioner timely filed a proposed recommended order that has been considered in the drafting of this Recommended Order.

FINDINGS OF FACT

1. Allan B. Williams is a licensed engineer fully authorized to do business in Florida. Respondent's recognized and legally sufficient name to do business is "Allan B. Williams, P.E."

2. On or about August 20, 2002, Respondent filed a fictitious name application with the Florida Department of State, Division of Corporations (DOS), that represented Allan B. Williams sought to do business under the fictitious name "ABW Engineering." Subsequently, the fictitious name was renewed on March 28, 2007, and was valid through December 31, 2012.

3. On or about May 29, 2013, Respondent again filed the requisite papers with DOS to establish "ABW Engineering" as a fictitious name, with an active status expiration date of December 31, 2018.

4. It is undisputed that Allan B. Williams, the subject of this case, is the person who established ABW Engineering with DOS.

5. In 2007, Petitioner cited the Respondent with practicing engineering through a business entity that was not properly authorized to do business in Florida. In response to that claim, Respondent acknowledged that he did business as ABW Engineering and stated, in part:

I didn't know I needed one. In all the years I practiced in Washington, D.C., Maryland and Virginia I never needed one. The only time I can remember this being a requirement, is, if you are a corporation home based outside these states and jurisdiction and you wish to do business in these states and jurisdiction, then you have to pay a "foreign corporation" tax or fee. It was my impression that Certificate of Authorization was the same as a foreign corporation fee.

6. In further response to the 2007 dispute, Respondent filed the appropriate paperwork and paid the required fees to obtain a Certificate of Authorization for ABW Engineering (No. 27462) with Allan B. Williams, P.E., identified as the registered principal officer for the company. The licensure date for ABW Engineering was May 3, 2007.

7. The letter announcing the approval of the Certificate of Authorization for ABW Engineering contained the following provisions:

Your Certificate of Authorization will expire February 28, 2009. A notice of renewal will be mailed to the address of the business thirty (30) to forty-five (45) days prior to the expiration date.

* * *

In accepting this registration, you assume the responsibility of complying with the requirements of Chapter 471, Florida Statutes and Chapter 61G15, Florida Administrative Code.

8. Allan B. Williams, P.E., did not timely renew the Certificate of Authorization for ABW Engineering when it expired on February 28, 2009.

9. From March 1, 2009, through May 8, 2013, Allan B. Williams, P.E., did business under the letterhead and logo of ABW Engineering. Respondent used the letterhead and logo on billing for engineering services rendered by Allan B. Williams, P.E.

10. On or about May 8, 2013, Petitioner issued a Notice to Cease and Desist to ABW Engineering. That notice provided, in pertinent part:

Our records show that you do not currently have a certification as required by section 471.023, FS. If the above facts are true, they establish probable cause for FBPE to believe you are violating Florida law by offering ENGINEERING SERVICES without the required license or certification.

11. On May 23, 2013, Respondent wrote a letter in response to the Notice to Cease and Desist that provided:

Certificate of Authority has never been uppermost in my mind. Why? For over thirty five years I have always received constant reminders to complete my courses in continuing education and to renew my PE license. Not once have I received reminders about renewing my Certificate of Authority. And so Certificate of Authority becomes obscure in comparison to the other licensing requirements. Think about it. For your PE you have to satisfy educational requirements at an accredited school of Engineering; you have to work for four (4) years doing progressively challenging engineering work which prepares you to take the PE exams; you have to pass the exams and then you get your PE License. Then every two (2) years you have to pass continuing education courses. For Certificate of Authority you fill out a form and you pay \$255. I don't think any Engineer would purposely avoid paying a \$255 fee and risk losing thousands of dollars in earnings. It slipped my mind—I forgot it—I apologies [sic].

12. On June 10, 2013, Respondent received a Certificate of Authorization for ABW Engineering.

13. On September 18, 2013, Petitioner notified Respondent that the Board was issuing a citation based upon the allegations previously disclosed to Respondent: that ABW Engineering had offered engineering services during a period of time when it was not properly certified or authorized to do business.

14. Under the terms of the citation, Respondent was given the option of paying the penalty calculated pursuant to Florida Administrative Code Rule 61G15-19.0071 (\$5,000.00) or having the case prosecuted pursuant to section 455.225, Florida Statutes (2013).^{1/} Respondent chose the latter.

15. At hearing, Respondent maintained that he did not do business as ABW Engineering, but as Allan B. Williams, P.E. That claim was not deemed persuasive in light of the totality of evidence that established Respondent routinely used the ABW Engineering letterhead and logo, was listed in the telephone and other directories as ABW Engineering, and billed for engineering services with the logo and name. Moreover, Respondent admitted that using "ABW Engineering" was a strategy to secure work.

CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

17. Section 471.023(2), Florida Statutes, provides:

For the purposes of this section, a certificate of authorization shall be required for any business organization or other person practicing under a fictitious name, offering engineering services to the public. However, when an individual is practicing engineering in his or her own given name, he or she shall not be required to be licensed under this section.

18. Section 471.005 provides, in pertinent part:

Definitions.--As used in this chapter, the term:

(1) "Board" means the Board of Professional Engineers.

(2) "Board of directors" means the board of directors of the Florida Engineers Management Corporation.

(3) "Certificate of authorization" means a license to practice engineering issued by the management corporation to a corporation or partnership.

(4) "Department" means the Department of Business and Professional Regulation.

(5) "Engineer" includes the terms "professional engineer" and "licensed engineer" and means a person who is licensed to engage in the practice of engineering under this chapter.

* * *

(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.

(8) "License" means the licensing of engineers or certification of businesses to practice engineering in this state.

19. Rule 61G15-19.001 provides, in part:

(1) Pursuant to Section 471.033(2), F.S., the Board, to the extent not otherwise set forth in Florida Statutes, hereby specifies that the following acts or omissions are

grounds for disciplinary proceedings pursuant to Section 471.033(1), F.S.

* * *

(3) A professional engineer, corporation or partnership shall not practice engineering under an assumed, fictitious or corporate name that is misleading as to the identity, responsibility or status of those practicing thereunder or is otherwise false, fraudulent, misleading or deceptive within the meaning of subsection 61G15-19.001(2), F.A.C. When an individual is practicing engineering as a sole proprietor under a combination of his own given name, and terms such as "engineering," "and associates" or "and company," then said person is practicing engineering under a fictitious name, and must obtain a certificate of authorization pursuant to Section 471.023(2), F.S. The name of a corporation or partnership, if otherwise authorized, may include the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession. An engineering firm may not offer services to the public under a firm name which contains only the name of an individual not licensed as a professional engineer, registered architect, land surveyor, landscape architect, or professional geologist, in any state.

20. Rule 61G15-19.0071 provides:

Citations.

(1) As used in this rule, "citation" means an instrument which meets the requirements set forth in Section 455.224, F.S., and which is served upon a licensee or certificateholder for the purpose of assessing a penalty in an amount established by this rule.

(2) In lieu of the disciplinary procedures contained in Section 455.225, F.S., FEMC is hereby authorized to dispose of any violation designated herein by issuing a citation to the subject within six months after the filing of the complaint that is the basis for the citation. If a violation for which a citation may be issued is discovered during the course of an investigation for an unrelated violation, the citation must be issued within 6 months from the discovery of the violation and filing of the uniform complaint form by the investigator.

(3) The following violations with accompanying fines may be disposed of by citation:

(a) An engineer who has practiced or offered to practice engineering through a corporation, partnership, or fictitious name which has not been duly certified. The fine shall be \$100 for each month or fraction thereof of said activity, up to a maximum of \$5,000. (See Sections 455.227(1)(j), 471.023, and 471.033(1)(a), F.S.)

(b) Practice with an inactive or delinquent license more than one month or if a Notice of Noncompliance has previously been issued for the same offense. The fine shall be \$100 for each month or fraction thereof. (See Section 471.033(1)(i), F.S.)

(c) Firm practicing without a current certificate of authorization more than one month or if a Notice of Noncompliance has previously been issued for the same offense. The fine shall be \$100 for each month or fraction thereof. (See Section 471.023, F.S.)

(d) Failure to notify the Board of a change in the principal officer of the corporation or partner in a partnership who is the qualifying professional engineer for said corporation or partnership within one month

of such change. The fine shall be \$500.
(See Section 471.023(4), F.S.)

(e) Unlicensed practice of engineering. The fine shall be up to \$250 for each month depending on the severity of the infraction practice, up to a maximum of \$5,000.00. (See Section 455.228(3)(a), F.S.)

(4) If the subject does not dispute the matter in the citation in writing within 30 days after the citation is served by personal service or within 30 days after receipt by certified mail, the citation shall become a final order of the Board of Professional Engineers. The subject has 30 days from the date the citation becomes a final order to pay the fine and costs. Failure to pay the fine and costs within the prescribed time period constitutes a violation of Section 471.033(1)(k), F.S., which will result in further disciplinary action. All fines and costs are to be made payable to "Florida Engineers Management Corporation--Citation."

* * *

(7) Subsequent violation(s) of the same rule or statute shall require the procedure of Section 455.225, F.S., to be followed. In addition, should the offense for which a citation could be issued occur in conjunction with violations not described herein, then the procedures of Section 455.255, F.S., shall apply.

21. In this case, Petitioner bears the burden of proof to establish by clear and convincing evidence that Respondent committed the acts complained of in the Administrative Complaint. See Dep't of Banking and Fin., Div. of Sec. and Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v.

Turlington, 510 So. 2d 292 (Fla. 1987); and Pou v. Dep't of Ins. and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

22. What constitutes "clear and convincing" evidence was described by the court in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n.5 (Fla. 1st DCA 1989), as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Fla. Dep't of Bus. & Prof'l Reg., 705 So. 2d 652 (Fla. 5th DCA 1998) (Sharp, J., dissenting).

23. In this case, Petitioner has met its burden of proof. Respondent, Allan B. Williams, is a licensed professional engineer who used an entity bearing a fictitious name to offer engineering services to the public in Florida. Allan B. Williams, P.E., is not entitled to use "ABW Engineering," the letterhead for ABW Engineering, the logo for ABW Engineering, or any form of ABW Engineering, unless ABW Engineering is first

registered as a fictitious name with DOS and issued a Certificate of Authorization by Petitioner. In this case, Respondent failed to keep the Certification of Authorization current. Respondent used the fictitious name inappropriately and unlawfully. After the incident in 2007, Respondent knew or should have known of the legal requirements regarding the use of the fictitious business name. Respondent ignored his responsibility under the law and failed to be accountable for his lapse in judgment. Respondent is not entitled to disregard the requirements of law.

24. In accordance with the penalty guidelines set forth in rule 61G15-19.004 and the charges alleged in this case, Respondent is subject to penalties ranging from reprimand, to suspension, to revocation of license, as well as fines from \$1,000.00 to \$5,000.00. More specifically, for the violation of section 471.033(1)(i), practicing engineering on an inactive or delinquent license, Respondent's fine may be calculated at the rate of \$100.00 per month, up to \$5,000.00.

25. Respondent has twice failed to obtain a valid Certificate of Authorization for the fictitious name under which he offers engineering services. During the most recent period of practicing without the Certificate of Authorization, Respondent worked for 52 months using "ABW Engineering." Respondent's long-term practice of engineering does not excuse his failure to comply with the law and regulations of the State of Florida.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Board of Professional Engineers enter a final order finding Respondent in violation of offering engineering services through a fictitious name that did not have a valid Certificate of Authorization, imposing an administrative fine in the amount of \$5,000.00, awarding the costs of prosecution against Respondent, and reprimanding Allan B. Williams, P.E., as the registered general officer of ABW Engineering.

DONE AND ENTERED this 2nd day of September, 2014, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of September, 2014.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2013), unless otherwise noted.

COPIES FURNISHED:

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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.