

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **11/4/2009**
File # **2009-09140**

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

FEMC Case Nos.: 2006058732

License No.: PE 57456

DAVID GILDART, P.E.

Respondent.

_____ /

FILED
Florida Engineers Management Corporation
Clerk

CLERK *Jamilee Maize*
DATE *11-4-2009*

FINAL ORDER ADOPTING SETTLEMENT STIPULATION

THIS CAUSE came before the BOARD OF PROFESSIONAL ENGINEERS (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on October 15, 2009, in Ponte Vedra Beach, Florida, for the purpose of considering a stipulation (attached hereto as Exhibit A) entered into between the parties in this cause on July 13, 2009. Upon consideration of the stipulation, the documents submitted in support thereof, the arguments of the parties, it is hereby:

ORDERED AND ADJUDGED that the stipulation as submitted be and is hereby adopted in toto and incorporated herein by reference. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the stipulation.

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

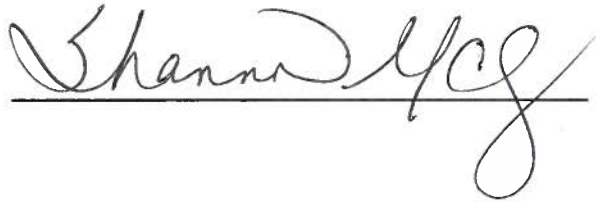
DONE AND ORDERED this 22 day of October, 2009, by the Florida Board of Professional Engineers.



Carrie A. Flynn, Executive Director
For John Burke, P.E., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U. S. Mail to David W. Gildart, P.E. c/o Robert Simon, Jr., Esquire, Winderweedle, Haines, Ward & Woodman, P.A., 329 Park Avenue North, Winter Park, Florida 32789 and by interoffice mail to Michael T. Flury, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, and John J. Rimes, Esquire, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303, this 23 day of November, 2009.



STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2006058732

DAVID W. GILDART, P.E.,

Respondent,

_____ /

SETTLEMENT STIPULATION

DAVID W. GILDART, P.E., hereinafter referred to as "Respondent", and the Florida Engineers Management Corporation, hereinafter referred to as "FEMC", hereby stipulate and agrees to the following joint stipulation and Final Order of the Board, incorporating this Stipulation in the above-styled manner.

STIPULATED FACTS

1. For all times pertinent hereto, Respondent was a licensed engineer in the State of Florida, having been issued license number PE 57456.
2. Respondent was charged by an Administrative Complaint filed by the Florida Engineers Management Corporation, and properly served upon Respondent with violations of Chapters 471 and 455, Florida Statutes. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.

STIPULATED CONCLUSIONS OF LAW

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1. Respondent, in his capacity as a licensed engineer, admits that in such capacity he is subject to provisions of Chapters 455 and 471, Florida Statutes, and the jurisdiction of the Department, FEMC, and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, constitute violations of Chapters 455 and 471, Florida Statutes, as alleged in the Complaint.

STIPULATED DISPOSITION OF LAW

1. Respondent shall, in the future, comply with Chapters 471 and 455, Florida Statutes, and the rules promulgated pursuant thereto.

2. Should Respondent fail to timely comply with the terms of the Final Order, this case will be submitted to the Probable Cause Panel for review and determination of whether additional disciplinary action should be taken.

3. Respondent's license shall be ~~SUSPENDED~~; the suspension shall be ~~STAYED~~ and then ~~VACATED~~ if Respondent pays COSTS of \$~~---~~^{\$1837.59} to the Board within ~~THIRTY~~ (30) DAYS of the date that the Final Order adopting this Stipulation is filed with the Agency Clerk.

4. Respondent's license to practice engineering shall be REPRIMANDED.

5. Respondent shall APPEAR before the Board when the stipulation is presented. Respondent should be prepared to discuss: what education, experience, and training he has to perform structural and electrical engineering; what impact the Consultants reports from this case will have on his future designs; what future training and educational courses does he plan to take to improve the quality of his work.

6. Respondent acknowledges that neither his attendance at the Board Meeting when this Stipulation is presented, nor any continuing education or college level courses taken as a

requirement of the terms of this Stipulation may be used to comply with the continuing education requirements of Chapter 61G15-22, Florida Administrative Code.

7. Respondent shall be placed on **PROBATION** for **TWO (2) YEARS** with the following terms:

a. Respondent shall successfully complete a Board-approved course in **ENGINEERING PROFESSIONALISM AND ETHICS** within one (1) year of the date the Final Order adopting this Stipulation is filed. Prior to that date, Respondent shall submit to the Board a Certificate of Completion. It is the Respondent's responsibility to notify the Board that he has completed the course in a timely manner. Respondent may contact the Florida Engineering Society, 125 South Gadsden Street, Tallahassee, Florida 32301, (850) 224-7121, for information regarding the availability of such courses in Florida. Respondent may also elect to complete one of the following correspondence courses offered by:

Murdough Center for Engineering Professionalism
Texas Tech University
PO Box 41023
Lubbock, Texas 79409
Course No. PDH-20 Basic Studies in Engineering Ethics
Telephone 806-742-3525; Fax 806-742-0444; e-mail ethics@coe.ttu.edu.

EPD Program
Auburn University
Engineering Extension Service
217 Ramsay Hall
Auburn, Alabama 3689-5331
Course No. V98E Ethics and Professionalism
Phone 800-446-0382 or 334-844-4370

National Society for Professional Engineers
PDC Buncher Commerce Park Avenue A#16
Leetsdale, Pennsylvania 15056-1304
Course No. ONL-005 Ethics & Risk Management
Phone 800-417-0348 Fax 412-741-0609

Accredited College or University courses.

Courses offered by Continuing Education Programs or Professional Business Programs (Exp: SunCam, Inc., C2Ed), are not Board Certified, and will not meet the requirements.

b. Respondent shall submit to the Board a detailed list of completed projects (signed, sealed, and dated), by the Respondent for **PROJECT REVIEW** at six (6) and eighteen (18) months from the date that the Final Order adopting this Stipulation is filed with the Agency Clerk.

c. A FEMC Consultant will select two (2) projects from the submitted lists for review. Respondent is responsible for promptly furnishing any set of completed plans, calculations, and any other supporting documentation 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.

d. Should the FEMC Consultant return a favorable report after reviewing the set of plans reviewed during the first year of probation, the requirements for the second year of probation will be waived and the probation terminated. A "favorable report" is herein defined as a report that, in the sole opinion of the Consultant with the concurrence of the Board, finds that the plans reviewed were considered to be free of any material engineering deficiencies.

e. If Respondent has not performed engineering services on a sufficient number of projects to make the submission required by 7. b. 1, the initial submission required by the terms of probation shall be extended for a period of six (6) months to allow Respondent to perform the

services necessary for the required review. However, if, after the extension has expired, Respondent does not perform sufficient engineering services to meet the requirements of the terms of probation, Respondent's license will be placed on voluntary inactive status as defined in Section 455.227, Florida Statutes, by the Board, without any further necessity for action on the part of Respondent. Respondent's license shall remain on such status, provided Respondent meets the requirements of Section 455.227, unless and until Respondent notifies the Board that he wishes to recommence practice and obtains Board authorization to reactivate his license under such terms of probation that the Board deems appropriate at that time.

f. Respondent shall successfully complete the STUDY GUIDE which has been prepared by the Board of Professional Engineers and which will be furnished to Respondent, regarding the Engineering Practice Act, Chapter 471, Florida Statutes, and the Rules of the Board of Professional Engineers. Respondent will complete and return the Study Guide within thirty (30) days of the date that the Final Order incorporating this Settlement Stipulation is filed, to the Board of Professional Engineers at 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303.

8. It is expressly understood that this Stipulation is subject to approval of the Board and FEMC and has no force and effect until the Board issues a Final Order adopting this agreement.

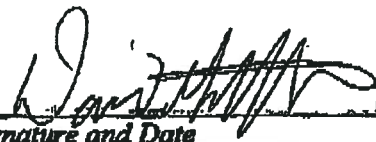
9. This Stipulation is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Stipulation. Furthermore, should this joint Stipulation not be accepted by the Board, it is agreed that presentation to and by the Board shall not unfairly or

illegally prejudice the board or any of its members from further participation, consideration or resolution of these proceedings.

10. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or otherwise challenge or contest the validity of the joint Stipulation of Facts, Conclusions of Law, imposition of discipline and the Final Order of the Board incorporating said Stipulation.

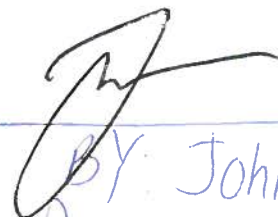
11. Respondent waives the right to seek any attorney's fees or costs from the Board in connection with this disciplinary proceeding.

WHEREFORE, the parties hereto request the Board to enter a Final Order accepting and implementing the terms contained herein.


Signature and Date July 13th 2009
DAVID W. GILDART, P.E.
Respondent
Case No. 2006058732

APPROVED this _____ day of _____, 2009.

Carrie Flynn, Executive Director
Florida Board of Professional Engineers


BY: John J. Rines III
Prosecuting Attorney
DWG

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **5/21/2009**
File #

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2006058732

DAVID W. GILDART, P.E.,

Respondent,

FILED
Florida Engineers Management Corporation
Clerk

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5-21-09

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner, Florida Board of Professional Engineers, hereinafter referred to as "Petitioner," and files this Amended Administrative Complaint against David W. Gildart, P.E., hereinafter referred to as "Respondent". This Amended Administrative Complaint is issued pursuant to Sections 120.60 and 471.038, Florida Statutes. Any proceeding concerning this complaint shall be conducted pursuant to Section 120.57, Florida Statutes. In support of this complaint, Petitioner alleges the following:

1. Petitioner, Florida Board of Professional Engineers, is charged with regulating the practice of engineering pursuant to Chapter 455, Florida Statutes. This complaint is filed by the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner. FEMC is charged with providing administrative, investigative, and prosecutorial services to the Florida Board of Professional Engineers pursuant to Section 471.038, Florida Statutes (1997).

2. Respondent is, and has been at all times material hereto, a licensed professional engineer in the State of Florida, having been issued license number PE 57456. Respondent's last known address is 1807 E. Winter Park Rd., Orlando, FL 32803.

3. D.W. Gildart, Inc. is the firm through which Respondent provides his engineering services to the public. D. W. Gildart, Inc. does not have a Certificate of Authorization.

4. On or around February 15, 2006, Respondent signed and sealed a set of plans that were submitted to the City of Winter Park's Building Department for approval.

5. On or around May 22, 2006, Respondent signed and sealed a second set of revised plans that were submitted to the City of Winter Park's Building Department for approval.

COUNT I

6. Petitioner realleges and incorporates paragraphs one (1) through five (5) as if fully set forth in this Count One.

7. Respondent's plans do not utilize due care in the practice of engineering in the in one or more of the following ways:

a. Submitted plans do not indicate magnitude of load imposed upon floor trusses.

b. The submitted plans do not include the lateral (wind) force that needs to be included in the design of the trusses to ensure that the loads created by the vertical discontinuity equal to the depth of the trusses between the lateral reaction at the tops of the walls and the "support" for that reaction.

c. The plans provide for a Simpson MTS12 twist strap to connect each roof truss to the supporting wood stud wall, even though such a strap has no lateral capacity and thus rendering the top of the stud wall unstable.

d. The foundation requirements depicted on the submitted plans are not adequate to safely allow a second floor addition on this type existing foundation system.

e. The plans do not contain a reconciliation of any of the requirements of the 2004 Florida Building Code as pursuant to Chapter 9 (Existing structures).

f. The Respondent's electrical plans for the project in question violated 61G15-33.003(2), F.A.C. by failing to include in the design of a power system the following items;

(1) Conductor Ampacities (sizes) and insulation type [61G15-33.003(2)(b)]

(2) Protection devices and interrupting capability [61G15-33.003(2)(c)]

(3) Circuitry of all outlets and devices [61G15-33.003(2)(e)]

(4) Load computations [61G15-33.003(2)(g)]

(5) Grounding and bonding [61G15-33.003(2)(i)]

8. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, by engaging in negligence in the practice of engineering by not complying with the 2004 Florida Building Code and not with the Responsibility Rules for the Design of a Power System required by 61G15-33.003(2), F.A.C. in his signed and sealed plans submitted to the City of Winter Park's Building Department.

COUNT TWO


9. Petitioner realleges and incorporates paragraphs one (1) through five (5) as if fully set forth in this Count Two.

10. Based on the foregoing, Respondent is charged with violating 471.023(2), Florida Statutes, by offering professional engineering services under a business name without holding the required Certificate of Authorization.

WHEREFORE, the Petitioner respectfully requests the Board of Professional Engineers to enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case, other than costs associated with an attorney's time, as provided for in Section 455.227(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 26th day of May, 2009.

Carrie Flynn
Executive Director



BY: Patrick Creehan
Prosecuting Attorney

COUNSEL FOR FEMC:

Patrick Creehan
Prosecuting Attorney
Florida Engineers Management Corporation
2507 Callaway Road, Suite 200
Tallahassee, Florida 32303
Florida Bar No. 0063540
PC/jt
PCP DATE: May 19, 2009
PCP Members: Rebane, Charland, Halyard

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to David W. Gildart, c/o Robert L. Simon, Esq., Windersweedle, Haines, Ward & Woodman, P.A., PO Box 880, Winter Park, FL 32790-0880, by certified mail, on the _____ of _____, 2009.
