

**BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS**

**IN RE: J. MICHAEL HARNETT
ELECTRICAL SYSTEMS, INC.**

C2010-18

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its president (hereinafter "the Board") for the purpose of agreeing to disciplinary action to be taken against J. Michael Harnett (hereinafter "Respondent") and Electrical Systems, Inc. (hereinafter "Respondent Firm"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The Board is a state entity created by West Virginia Code § 30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to the same.
2. Respondent Firm, Electrical Systems, Inc., is organized under the laws of the State of West Virginia with its principal place of business located in Clarksburg, West Virginia.
3. Respondent J. Michael Harnett, as the owner of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
4. Prior to the filing of this Complaint, it was reported to the Board by one of its licensees that Respondents was performing engineering services in the State of West Virginia.
5. Upon investigation by the Board, Respondent Firm appeared to be offering engineering in the State of West Virginia, including statements on its website offering such services.
6. At its regular meeting, the Board initiated complaint number C2010-18 which was filed on April 6, 2010.
7. In response to the complaint, Respondents removed their website, agreed to cease any engineering practice in the State of West Virginia during the pendency of this action, and

sought guidance from the Board regarding compliance with the West Virginia engineering law.

8. At all relevant times, as alleged in the complaint, Respondent did not have a valid license to practice engineering, as defined by West Virginia Code § 30-13-1 *et seq.*, in the State of West Virginia.
9. At all relevant times, as alleged in the complaint, Respondent Firm did not have a valid Certificate of Authorization, as required by West Virginia Code § 30-13-1 *et seq.*
10. Respondents' prompt response in connection with this Complaint, including removal of the website, mitigates Respondents' culpability regarding the admitted violations of West Virginia engineering law; therefore, based upon the foregoing, the Board, in its discretion, will not assess administrative costs although the Board does find that it is within its power to assess such costs according to W. Va. Code § 30-13-21(d) (4) and W. Va. Code § 7-1-14.4.
11. To the extent that this Consent Order is approved by the Board, Respondents waive their right to a hearing on this matter and other rights set forth in West Virginia Code § 30-13-1 *et seq.* and the procedural rules of the Board.

CONCLUSIONS OF LAW

1. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-1 *et seq.*, in the State of West Virginia unless that person is duly registered under the provision of West Virginia engineering law. W. Va. Code § 30-13-2.
2. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. W. Va. Code § 30-13-17.
3. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board." W. Va. Code § 30-13-21(b); *see also* W. Va. Code § 30-13-21(d)(4).

4. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 *et seq.*, without a license, to which Respondent has admitted herein, is an action that would subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W.Va. Code R § 7-1-15.1.
5. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 *et seq.*, without a valid Certificate of Authorization, to which Respondent Firm has admitted herein, is an action that could subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5000.00). W.Va. Code R § 7-1-15.1.
6. Each day of continued violation may constitute a separate offense. W.Va. Code R § 7-1-15.3.

CONSENT OF RESPONDENTS

J. Michael Harnett, individually and as the owner of Electrical Systems, Inc., by affixing his signature hereon, agrees to the following:

1. Respondents are aware of their option to pursue this matter through appropriate administrative and/or court procedures, but Respondents intelligently and voluntarily waive their right to do so, in the event that this Consent Order is approved by the Board.
2. Respondents intelligently and voluntarily waive their right to a formal hearing before the Board in this matter provided the Board accepts the terms and conditions set forth herein.
3. Respondent admits he offered to provide engineering services in the State of West Virginia without a valid license, as defined by West Virginia § 30-13-1 *et seq.*
4. Respondent Firm admits it offered to provide engineering services in the State of West Virginia without the required Certificate of Authorization, as defined by West Virginia § 30-13-1 *et seq.*

5. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
6. Respondents agree that in advance of practicing or offering to practice any engineering, as defined by W. Va. Code §30-13-1 *et seq.*, in the State of West Virginia, to contract with or hire a properly licensed Professional Engineer with a valid Certificate of Authorization, and to not offer such services on their website except as in accordance with this Consent Order.
7. Respondents acknowledge that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2010-18. This paragraph is binding on the participants even in the event that the Board does not approve this Consent Order.
8. Respondents acknowledge that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents prior to or in conjunction with consideration of this Consent Order.
9. Should the Board not approve this Consent Order, Respondents have waived any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Order.
10. Respondents acknowledge that the Board may reject this proposal, complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
11. Upon acceptance by the Board, this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may

be the subject of any appeal or other civil or administrative action except an action to enforce the terms of this Consent Order.

12. Respondents understand that this Consent Order and the underlying Complaint are public records and agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
13. Respondents acknowledge that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any Certificate of Authorization issued to Respondent Firm, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2010-18 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) for offering to practice engineering in the State of West Virginia without a valid license.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for offering to practice engineering in West Virginia without a valid Certificate of Authorization.

4. The civil penalties imposed herein totaling Five Hundred Dollars (\$500.00) must be paid within thirty (30) days of the date Respondents receive notice of the Board President's signature hereon, such amount to be made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt. Failure to remit the payment of these civil penalties within the prescribed time period will result in further disciplinary action.
5. Based on Respondent Firm's representation that it has employees with engineering degrees, any such employee may make application to the Board for examination and licensure by submitting proof of satisfactory completion of the educational requirements and "satisfactory experience" set forth in West Virginia Code R. §§ 7-1-3.5 and 3.6. The Board shall, in accordance with West Virginia Code R § 7-1-3, consider the entire work history of any applicant from the date of degree as described in W. Va. Code R § 7-1-3.6.
6. Upon payment of the civil penalties and at such time as it may qualify, Respondent Firm may apply for a Certificate of Authorization to practice engineering in the State of West Virginia.
7. Respondents shall not practice or offer to practice engineering in the State of West Virginia, as defined by W. Va. Code §30-13-1 *et seq.*, until such time as Respondents have qualified for same on their own behalf or have contracted with a properly licensed Professional Engineer working under a valid Certificate of Authorization to perform engineering services on behalf of Respondent Firm in the State of West Virginia in accordance with West Virginia engineering law as set forth in W. Va. Code § 30-13-1 *et seq.* and related rules.
8. Respondents shall not offer engineering services in West Virginia on their website or in any other manner until such time as Respondents can do so legally either by obtaining the certifications required by this Board or by contracting for same with an engineer or firm in good standing with this Board. In the event such services are offered under contract, any advertisement of such services shall name the Professional Engineer who will complete and seal the work.

9. In accordance with the laws and rules governing the Board, this Consent Order and the underlying Complaint are public records and the sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
10. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
11. If the civil penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$500.00), together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.
12. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.
13. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:



**J. MICHAEL HARNETT, on behalf of
ELECTRICAL SYSTEMS, INC.**

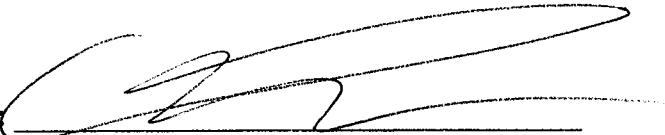
11-10-10
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this:

15 day of November, 2010.

**WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS**

By



**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**

PREPARED BY:

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