

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

RECEIVED

JUN 09 2014

WV PE BOARD

IN RE: **MARK TAYLOR**
 J.F. KIELY SERVICE COMPANY, LLC

C2014-11

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "the Board") by Edward L. Robinson, P.E., its President, for the purpose of agreeing to disciplinary action to be taken against Mark Taylor ("Respondent Taylor") and J.F. Kiely Service Company, LLC ("Respondent Firm" or "JFKS") (together, "Respondents"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter.

FINDINGS OF FACT

The Board, upon approval of such agreement, does hereby **FIND** the following:

1. The Board is a State entity required and authorized to regulate the practice of engineering in West Virginia pursuant to West Virginia Code § 30-13-1 *et seq.*
2. Respondent Firm is an engineering, procurement, and project management company organized under the laws of the State of New Jersey, with its principal offices in Long Branch, New Jersey.
3. Robert A. Patterson is the President of Respondent Firm and, as such, is duly authorized to make admissions and enter into agreements on its behalf.
4. Respondent Taylor is not a licensed professional engineer and is employed by Respondent Firm.
5. The investigation which gave rise to this Complaint arose from an application for comity licensure submitted to the Board in December 2013 by an employee of Respondent Firm.

6. The Board investigation revealed that Respondents had submitted engineering proposal documents to an energy company [“the client”], including a proposed engineering plan and profile drawing relating to the proposed installation of a natural gas pipeline under railroad track located in West Virginia [“the project”].

7. Respondents’ meetings and discussions with the client began in August of 2013 and included the following email communications:

- a. On October 18, 2013, Respondent Taylor provided the client with a draft, proposed engineering scope of work outline for the project and an offer to further refine the scope of work at a subsequent meeting;
- b. On November 1, 2013, Respondent Taylor communicated with the client regarding pricing the scope of work, indicating JFKS would work in the interim to "begin communications with the appropriate team members to compile base map information" from publicly available sources and define an estimate and schedule for a portion of the project;
- c. On November 5, 2013, Respondent Taylor provided a proposed scope and estimate for another portion of the project and indicated JFKS had started the layout work;
- d. On November 7, 2013, Respondent Taylor again communicated with the client regarding the layout work;
- e. On December 2, 2013, Respondent Taylor sent client a draft plan and profile and stated, among other things, that “J.F. Kiely will continue to work in good faith to meet the anticipated project schedule . . .” previously provided to JFKS by the client; and
- f. On December 15, 2013, Respondent Taylor provided the final proposal to the client, stating that JFKS’ engineers and others were gathering information daily and looked “forward to completing this important and time sensitive project . . .”

8. During the communications set forth above, Respondent Firm employed four (4) professional engineers licensed in one or more states, but none were licensed in the State of West Virginia.

9. After two (2) employees of Respondent Firm became registered professional engineers in the State of West Virginia by comity, Respondent Firm applied for and was issued a Certificate of Authorization (COA) on March 21, 2014.

10. The Board initiated Complaint Number C2014-11 at its regular meeting on March 25, 2014, which was served upon Respondents' counsel at his request on April 9, 2014.

11. The Respondent Firm entered into an agreement with the client to provide engineering services for the project on or about March 31, 2014.

12. Respondents, with the assistance of counsel, have cooperated with the Board's investigation and promptly notified the Board and initiated settlement negotiations rather than filing a response to the Complaint.

13. Respondents admit the facts set forth above.

14. The Board finds that the communications set forth above indicate that preparatory work was proceeding even though the proposal was not yet finalized or an agreement entered into and further finds that the facts were perilously close to an additional count of actual practice of engineering without a license.

15. In determining the amount of a civil penalty to be assessed, the Board has considered the following factors: the circumstances leading to the violation; the lack of history of previous violations; the fact that an employee of Respondent Firm brought the facts giving rise to the discipline to the Board's attention; Respondents' cooperation with the Board in investigating and resolving this Complaint; and other appropriate matters.

16. The Board incurred administrative costs in connection with the investigation, initiation and resolution of this Complaint in excess of One Thousand Dollars (\$1,000.00).

CONCLUSIONS OF LAW

17. The Board is the State entity required and authorized to regulate the practice of engineering in the State of West Virginia. W.Va. Code § 30-13-1 *et seq.* The allegations set forth in the Complaint, as resolved in this Consent Order, are matters that are within the jurisdiction of this Board.

18. 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 provisions of West Virginia engineering law. W.Va. Code § 30-13-2.

19. 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.

20. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as:

- a. Whether the amount imposed will be a substantial economic deterrent to the violation;
- b. The circumstances leading to the violation;
- c. The nature and severity of the violation and the risk of harm to the public;
- d. The history of previous violations;
- e. The extent to which the cited person or firm has cooperated with the Board and the Board's investigation;
- f. The economic benefits gained by the violator as a result of the noncompliance;
- g. The interest of the public; and
- h. Other matters as may be appropriate.

W. Va. Code R. § 7-1-15.4.

21. The assessment of administrative costs is within the Board's sole discretion. W.Va. Code § 30-13-21(d) (4) and W. Va. Code R § 7-1-14.4.

22. Robert A. Patterson, as the President of Respondent Firm, has the power and authority to make admissions, enter into agreements and otherwise act on behalf of Respondent Firm.

CONSENT OF RESPONDENTS

Mark Taylor, individually, and Robert A. Patterson, as President of J.F. Kiely Service Company, LLC, by affixing their signatures hereon, agree to the following:

23. Respondents are represented by counsel and are aware of their right to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

24. Respondent Firm admits that it did not have a Certificate of Authorization to offer engineering services in the State of West Virginia at the time of the offer, in violation of West Virginia engineering law.

25. Respondent Taylor admits that he did not have the required license to practice engineering in the State of West Virginia at the time he offered engineering services in West Virginia, in violation of West Virginia engineering law.

26. Respondents consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion. Respondents' consent to the entry of this Consent Order does not constitute an admission to the factual or legal determinations of the Board, except to the extent expressly admitted herein.

27. 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 C2014-11 through the date this Consent Order is submitted for final approval. This paragraph is binding on Respondents even in the event that the Board does not approve this Consent Order.

28. 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 the subject matter of Complaint Number C2014-11 in its consideration of this Consent Order.

29. Should the Board not approve this Consent Order, Respondents waive any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondents even if the Board does not approve this Consent Order.

30. Respondents acknowledge that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate. Should the Board not approve this Consent Order, the admissions of Respondents as set forth herein will be deemed null, void and withdrawn.

31. Respondents and the Board understand that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by Respondents or the Board to enforce the terms of this Consent Order. Nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondents which may be before this Board.

32. Respondents understand that the Complaint, documents submitted to the Board by Respondents, this Consent Order, and other public records which may be in the file are public records which must be made available upon legal request in accordance with the State's Freedom of Information Act.

33. Respondents agree 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).

34. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.

35. Respondents acknowledge that proof of any material misstatement or misrepresentation made in connection with this matter may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondents by the Board, 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, the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code §30-13-22(b).

2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) in settlement of Complaint #C2014-11 for offering to practice engineering in West Virginia without a Certificate of Authorization.

3. The Board **ORDERS** Respondent Taylor to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) in settlement of Complaint #C2014-11 for offering to practice engineering in West Virginia without a license.

4. The Board **ORDERS** Respondents to pay administrative costs in the discounted amount of Five Hundred Dollars (\$500.00) in settlement of Complaint #C2014-11 for offering to practice engineering in West Virginia without a license.

5. The civil penalties agreed to herein in the total amount of Five Hundred Dollars (\$500.00) shall be paid within thirty (30) days of the date of entry of this Consent Order, evidenced by the date of the Board President's signature, made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.

6. The administrative costs agreed to herein in the total amount of Five Hundred Dollars (\$500.00) shall be paid by separate payment within thirty (30) days from the date of entry, such amount to be made payable to the W. Va. P.E. Board.

7. The untimely payment of the civil penalty and administrative costs imposed herein or any violation of the terms of this Consent Order may result in the reinstatement of this Complaint and/or further disciplinary action by the Board.

8. The Board **ORDERS** this Consent Order and the underlying Complaint to 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).

9. If either of the civil penalties or the administrative costs imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent Taylor or the Respondent Firm, as applicable, upon application by the Board for the entry of a Judgment Order for the total amount of the payment agreed to herein, together with pre-judgment interest from the date of the Board 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.

10. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of

any appeal or other civil or administrative actions except an action by the Board or the Respondents to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent which may come before this Board.

11. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties and administrative costs agreed to herein.

12. 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:



MARK TAYLOR, individually

6-4-2014

DATE



J.F. KIELY SERVICE COMPANY, LLC
By: Robert A. Patterson, its President

6/4/2014

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 2nd day of June, 2014.

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

By:



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

PREPARED BY:

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REVIEWED BY:

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