

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

**IN RE:        BHJ Engineering, Inc.**  
                 **Minor/Smith Botts**

**C2006-10**

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president (hereinafter the "Board"), and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action which shall be taken against BHJ Engineering, Inc., and Minor Botts Smith [hereinafter at times referred to as Respondent firm, Respondent Smith or Respondents]. 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 West Virginia Code §30-13-1 *et seq.*
2.     BHJ Engineering, Inc., is a West Virginia corporation and maintained an office in Lewisburg, West Virginia, until on or about August 1, 2006.
3.     Prior to October of 2005, BHJ Engineering, Inc., practiced engineering in the state of West Virginia under a Certificate of Authorization (COA) which was revoked upon the resignation of its engineer in responsible charge.
4.     Minor Botts Smith is an employee of Byer, Harmon and Johnson General Contractors, Inc., a sister corporation to BHJ Engineering, Inc., located in Covington, Virginia.

5. Respondent Smith is not licensed to practice engineering in West Virginia, although he holds a professional engineer's license in Virginia and Colorado.
6. The board-initiated complaint was filed on May 8, 2006.
7. Respondents refused the initial service sent by certified mail on May 12, 2006, and accepted the second certified mailing, return receipt dated June 23, 2006.
8. While Respondent Smith provided some information to the Board during the investigative phase of this matter, no formal response was filed on behalf of either respondent subsequent to the filing of the Complaint and Respondents did not contact this Board until less than two weeks prior to the noticed hearing.
9. Respondent firm's practice of engineering without a COA includes advertising in the West Virginia yellow pages and on the website of its sister corporation, Byer, Harmon & Johnson General Contractors, Inc., which states that Respondent, at its West Virginia address, offers a full range of Civil Engineering and Construction Management services; lists such current projects as residential sub-divisions, road design, airports, bridges, drainage projects, and layout for developments; and boasts "a networked office allowing access to projects by multiple engineers and technicians."
10. Respondent firm admits it offered to practice engineering in West Virginia after the revocation of its COA but denies that it actually did any engineering work in West Virginia after the revocation of its COA.
11. Respondent Smith reviewed engineering work and did some calculations in connection with three aspects of a residential construction in preparation for the giving of expert testimony in an arbitration proceeding, prior to which counsel for the parties contacted the Board and its counsel with regard to whether the offering of testimony would constitute practicing engineering without a license.

12. Counsel for Respondent Smith was advised that testimony per se would not be deemed the practice of engineering but that work done preparing for the testimony may be deemed engineering and that if the expert is licensed in another state he should seek licensure by comity.
13. Counsel did not want to subject his expert to possible disciplinary action by the Board and was prepared to withdraw the testimony, but the arbitrator did not deem Respondent Smith to be engaged in the unlicensed practice of engineering and requested his testimony.
14. Because this Board is unclear of the amount and type of work done by Respondent Smith in preparing for the testimony and because counsel for Respondent Smith consulted with the Board prior to the testimony, the Board is not proceeding against Respondent Smith for unlicensed practice in connection with the expert testimony but is proceeding against Respondent Smith on the charge of offering to practice engineering in West Virginia without a license.
15. Respondent Smith represents that he has done no other engineering work in the State of West Virginia, but admits that his email address on Respondent firm's West Virginia website can be reasonably deemed an offer to practice engineering in the State of West Virginia.
16. Respondent Smith has not attempted to become licensed in the State of West Virginia, nor has Respondent firm attempted to have its COA reinstated.
17. Respondents waive their right to a hearing on this matter and other rights set forth in W. Va. Code §30-13-1 *et seq.* and the procedural rules of the Board.
18. In addition to the duplicated service of the complaint, the Board, not having heard from Respondents until just prior to the hearing, noticed this matter for hearing and had to prepare for same and therefore finds it appropriate to impose administrative costs in this matter.

### **CONCLUSIONS OF LAW**

19. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance a certificate of authorization by the Board. West Virginia Code §30-13-17.
20. It is unlawful for any person to practice or offer to practice engineering in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. West Virginia Code §30-13-2.
21. Offering to practicing engineering without a certificate of authorization is an action that would subject a firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 CSR 1.15.1.
22. Offering to practicing engineering without a license is an action that would subject a person to discipline by the Board, including a civil penalty up to \$5000.00. 7 CSR 1.15.1.
23. 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.” West Virginia Code §30-13-21(b); see *also* W. Va. Code §30-13-21(d)(4).
24. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.

### **CONSENT OF BHJ ENGINEERING, INC.**

John B. Harris, an officer and director of BHJ Engineering, Inc., by affixing his signature hereon, agrees to the following on behalf of BHJ Engineering, Inc:

25. Respondent firm is represented by counsel, who has advised Respondent firm of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent firm intelligently, knowingly and voluntarily waives its right to do so.
26. Respondent firm intelligently and voluntarily waives its right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
27. Respondent firm agrees to accept an informal settlement of Complaint 2006-10.
28. Respondent firm consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
29. Respondent firm acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
30. Respondent firm acknowledges that proof of any misstatement or misrepresentation made on any future application for COA or any document or statement relied upon in the entering of this consent order 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.

### **CONSENT OF MINOR BOTTS SMITH**

Minor Botts Smith, by affixing his signature hereon, agrees to the following:

31. Respondent Smith is represented by counsel, who has advised Respondent of his option to pursue this matter through appropriate administrative and/or court procedures, but Respondent Smith intelligently, knowingly and voluntarily waives his right to do so.
32. Respondent Smith intelligently and voluntarily waives his right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
33. Respondent Smith agrees to accept an informal settlement of Complaint 2006-10.
34. Respondent Smith consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
35. Respondent Smith acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
36. Respondent Smith acknowledges that proof of any misstatement or misrepresentation made on any future application for licensure or any other document or statement relied upon in the entering of this consent order will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license issued to Respondent Smith, 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**


37. 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).
38. The Board **ORDERS** Respondent firm to pay a civil penalty in the amount of Four Hundred Dollars (\$400.00) for offering to practice engineering without a certificate of authorization.
39. The Board **ORDERS** Respondent Smith to pay a civil penalty in the amount of One Hundred Dollars (\$100.00) for offering to practice engineering without a license.
40. The Board **ORDERS** Respondent Smith or the firm to pay administrative costs in the amount of One Hundred Dollars (\$100.00).
41. The civil penalties and administrative costs imposed above must be paid within thirty (30) days of the date of the signature of the Board President, such penalties and costs to be made payable to the W. Va. P.E. Board.
42. Respondents will not practice or offer to practice engineering in the State of West Virginia unless and until the civil penalties and costs imposed herein have been paid in full, Respondent firm has qualified for and obtained the required certificate of authorization and Respondent Smith has qualified for and obtained licensure in the State of West Virginia.
43. If Respondent firm has not qualified for and obtained the required certificate of authorization on or before November 1, 2006, the Board **ORDERS** Respondent firm to discontinue its website on November 1, 2006, and to cease and desist from any future references to the West Virginia offices of BHJ Engineering or be subject to a civil penalty of \$100.00 per day for each day of continued violation, up to a maximum of five thousand dollars (\$5,000.00).

44. Respondent firm shall be notified by certified mail of any additional civil penalty imposed pursuant to Paragraph 43 above and shall make the required payment within thirty (30) days of receipt of such notice.
45. The amounts paid in civil penalties shall be transferred to the general fund of the State of West Virginia upon receipt, and the administrative costs shall be deposited into the accounts of the Board to cover the costs of this disciplinary action.
46. Respondents acknowledge this Consent Order and the underlying Complaint are public records and agree that the sum and substance of the Complaint and this agreement in part or in their entirety may 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).
47. Any violation of the terms of this Consent Order shall be immediate cause for summary revocation of Respondent firm's COA, Respondent Smith's engineering license, and further disciplinary action by the Board.
48. 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 initiated by Respondent.
49. If the civil penalties and administrative costs imposed hereunder are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$600.00) and any additional amounts which may be imposed up to an additional \$5,000.00, together with pre-judgment interest from the date of the President's signature hereon and post-judgment interest from the date of entry




of the Judgment Order, which judgment shall be fully executable in accordance with applicable law.

WEST VIRGINIA STATE BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS


  
E.L. Rasmussen  
Vice President

By:

  
LEONARD J. TIMMS, P.E.  
Board President

Date:

9/27/06

  
JOHN B. HARRIS on behalf of  
BHJ ENGINEERING, INC.

Date:

18 Sept 06

  
MINOR BOTTS SMITH

Date:

20 Sept 06