

BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

WEST VIRGINIA BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS,

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Complainant,

WV PE BOARD

v.

CASE NO. 2009-10

M. GINGER SCOGGINS AND ENGINEERED
DESIGNS, INC.

Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Pursuant to a hearing held before the West Virginia State Board of Registration for Professional Engineers (hereinafter "Board"), Leonard Timms presiding, on the 21st day of July 2009 at the offices of the Board located at 300 Capitol Street, Suite 910, Charleston, West Virginia, the Board hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondents were mailed the Complaint No. C2009-10 by Certified Mail on February 11, 2009, and was signed for on February 13, 2009. (July 21, 2009, Tr. p. 9, Board Exhibit 1).
2. On June 16, 2009, Respondents were mailed a Notice of Hearing on

Complaint C2009-10 by Certified Mail which was signed for on June 18, 2009. (July 21, 2009, Tr. p. 11, Board Exhibit 2).

3. Neither Respondent Scoggins, nor any representative of Respondent Firm appeared for the hearing on this matter. (July 21, 2009, Tr. p.7).

4. Respondents' non-attendance was without good cause.

5. Respondent M. Ginger Scoggins (hereinafter "Respondent Scoggins") is the co-owner and principal mechanical engineer of Respondent Firm Engineered Designs, Inc. (hereinafter "Respondent Firm"). (July 21, 2009, Tr. p. 16, Board Exhibit 4).

6. Engineered Designs, Inc. (a/k/a EDI), Respondent Firm is located in Raleigh, North Carolina. (Board Exhibit 1).

7. Respondent Scoggins held West Virginia Professional Engineers License No. 15414, which had lapsed in July 2005. (July 21, 2009, Tr. p. 12-13, Board Exhibits 1).

8. On September 8, 2009, Respondent Scoggins submitted an application for the reinstatement of her license to the Board. (July 21, 2009, Tr. p. 15, Board Exhibit 3).

9. On her application for reinstatement of her license, Respondent Scoggins indicated that she had not practiced or offered to practice engineering in West Virginia while she was unlicensed. (July 21, 2009, Tr. p. 14-15, Board Exhibit 3).

10. Respondent indicated both on her application and through telephone communication with the Board's investigator that she was working as a sole proprietor not

with under the Respondent Firm. (July 21, 2009, Tr. p. 10, Board Exhibit 3).

11. During the investigation of a separate complaint, Don Johnson, Investigator for the Board, became aware of Respondents' involvement with a project in Oak Hill, West Virginia. (July 21, 2009, Tr. p. 10).

11. Further investigation revealed that Respondent Scoggins had submitted an initial offer to Ken Blanton at Ivey Mechanical containing her proposal to do the work on Respondent Firm's stationary which was dated August 25, 2008 she signed as an officer of that company. (July 21, 2009, Tr. p. 17-18, Board Exhibit 4).

12. The date of Respondent Scoggins initial proposal was prior to the notarized date of September 8, 2008 that she provided on her application for reinstatement. (July 21, 2009, Tr. p. 15, 18, 21, Board Exhibits 3 and 4).

13. Upon further inquiry regarding these matters, Respondent Scoggins failed to return telephone calls to the Board's investigator. (July 21, 2009, Tr. p. 18).

14. Respondent Scoggins did practice or offer to practice engineering prior to making application to reinstate her license to practice engineering in West Virginia.

15. Respondent Scoggins indicated that she had not performed engineering work in West Virginia on the application she submitted for reinstatement of her license when she had in fact began work in West Virginia prior to the submission of her application.

16. In addition to the August 25, 2008 proposal letter, Mr. Johnson's investigation

also revealed drawings that had the markings of EDI, Respondent Firm, in the title block. (July 21, 2009, Tr. p. 19, Board Exhibit 5 and 6).

17. Also, during his investigation, Mr. Johnson uncovered that on at least two occasions, people from Respondents' office came to the hospital in Oak Hill, took measurements and addressed concerns with the project. (July 21, 2009, Tr. p. 20).

18. Respondent Scoggins provided misinformation to the Board both on her application and telephone communication with the Board's investigator when she stated that she was the sole proprietor for the work being done in West Virginia.

19. The Board has incurred Seven Hundred and Thirteen Dollars (\$713.00) in administrative costs in the investigation and hearing of this matter.

CONCLUSIONS OF LAW

1. The Board is a State entity created by West Virginia Code §30-13-1 *et seq.* to regulate the practice of engineering in this state.

2. The Board is authorized to discipline any person practicing or offering to practice engineering in the State of West Virginia. W. Va. Code § 30-13-1 *et seq.*

3. The failure to file a response to a complaint is deemed an admission of the factual allegations contained therein and shall not be grounds for delaying a hearing or other action upon the complaint. W. Va. Code R. § 7-2-2.5.

4. The Board is authorized to proceed with a hearing without the attendance of

the Respondent. W. Va. Code § 30-13-22(c).

5. The Board has the authority to levy fines and assess costs against persons who violate the law as it pertains to the practice of engineering. W. Va. Code § 30-13-21(b) and W. Va. Code R. § 7-1-15.

6. Practicing or offering to practice engineering in the state of West Virginia without a license 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.

7. Practicing or offering to practice engineering in the state of West Virginia without a Certificate of Authorization issued by the Board is an action that would subject a person and/or entity 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.

8. Providing false information to the Board is an action which would subject a person to discipline by the Board, including a civil penalty up to Fifteen Thousand Dollars (\$15,000.00). W. Va. Code § 30-13-21(12), W. Va. Code R. § 7-1-15.1.

9. Each day of continued violation constitutes a separate offense. W. Va. Code R. § 7-1-15.2.

10. Any civil penalty assessed as a result of a hearing must be paid within fifty (50) days of the entry of this Order. W. Va. Code § 30-13-22(f).

11. The Board has the authority to assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity found in violation of its rules, which shall be paid to the West Virginia State Board of Registration for Professional Engineers by check or money order within a period of thirty (30) days from the date the final Order is entered by the Board. W. Va. Code R. § 7-1-14.4.

ORDER

Based upon the foregoing, the Board hereby **ORDERS** the following:

1. That Respondent Scoggins pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering in the State of West Virginia without a license.
2. That Respondent Firm pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering in the State of West Virginia without a valid Certificate of Authorization.
3. That Respondent Scoggins pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) which equals Five Hundred Dollars (\$500.00) for each of two counts of providing false information to the Board.
4. That Respondent Scoggins' license to practice engineering be suspended for a period of one (1) year from the date this **ORDER** is entered.
5. That Respondent Firm will not be permitted to make application for a

Certificate of Authorization to practice engineering in the State of West Virginia for a period of one (1) year from the date this **ORDER** is entered.

6. That the required payments of the civil penalties totaling One Thousand, Five Hundred Dollars (\$1,500.00) be made within fifty (50) days from the date of entry of this **ORDER** being made payable to the State of West Virginia.

7. That Respondents pay administrative costs in the amount of Seven Hundred Thirteen Dollars (\$713.00).

8. That the required payments of administrative costs Seven Hundred Thirteen Dollars (\$713.00) to be made within thirty (30) days of entry of this **ORDER** being made payable to the West Virginia P.E. Board.

9. That a copy of this **ORDER** be served upon Respondents by Certified Mail within five days after entry by the presiding officer.

10. That a copy of this **ORDER** be set forth in Board publications, on the Board's website and the national enforcement databases, as well as other appropriate public placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

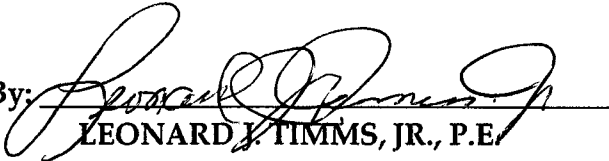
11. This **ORDER** may be appealed to the Circuit Court of Kanawha County in accordance with West Virginia law.

ENTERED into the records of the West Virginia State Board of Registration for

Professional Engineers this:

4th day of September, 2009.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL
ENGINEERS,

By: 
LEONARD J. TIMMS, JR., P.E.
BOARD PRESIDENT