

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

AUG 18 2010

IN RE: BALZER & ASSOCIATES, INC.

C2010-23

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 Balzer & Associates, 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, Balzer & Associates, Inc., is organized under the laws of the State of Virginia with its principal office located in Roanoke, Virginia.
3. James McAden, as the president of Respondent Firm, and has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
4. Respondent Firm employed a licensed professional engineer, who reported on his comity application that Respondent Firm has done work in the State of West Virginia.
5. Respondent Firm's was issued Certificate of Authorization Number CO2036 which it permitted to lapse on June 30, 2006 and was subsequently reinstated on April 27, 2010.
6. Respondent Firm completed projects in West Virginia while its Certificate of Service was lapsed.
7. At all relevant times, with regard to the allegations contained in this complaint, Respondent Firm did not have a valid Certificate of Authorization.
8. Respondent Firm is aware that providing services for engineering work to be done in the

State of West Virginia without a valid certificate of authorization constitutes a violation of the laws as they pertain to the practice of engineering.

9. After offering and providing engineering services in West Virginia, Respondent Firm made application to this Board.
10. At its regular meeting, the Board initiated complaint number C2010-23 which was filed on June 15, 2010.
11. Respondent Firm admits it provided engineering services for a project located in the State of West Virginia without a valid Certificate of Authorization in this State.
12. Respondent Firm's prompt response in connection with this Complaint mitigates Respondent Firm's 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 their power to assess such costs according to W.Va. Code R § 7-1-14.4.
13. Respondent Firm has waived its 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.

CONCLUSIONS OF LAW

1. 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. West Virginia Code § 30-13-17.
2. 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).

3. Practicing or offering to practice engineering 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.
4. Each day of continued violation may constitute a separate offense. W.Va. Code R § 7-1-15.3.

CONSENT OF RESPONDENT

James McAden, as the president of Balzer & Associates, Inc., by affixing his signature hereon, agrees to the following:

1. Respondent Firm is aware of its right to be represented by counsel and of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent Firm intelligently and voluntarily waive their right to do so.
2. Respondent Firm intelligently and voluntarily waives its right to a formal hearing before the Board in this matter provided the Board accepts the terms and conditions set forth herein.
3. Respondent Firm admits it provided engineering services in the State of West Virginia without the required Certificate of Authorization.
4. Respondent Firm accepts the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
5. Respondent Firm acknowledges 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 C2010-23. This paragraph is binding on the participants even in the event that the Board does not approve this Consent Order.

6. Respondent Firm acknowledges 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.
7. Should the Board not approve this Consent Order, Respondent Firm has 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.
8. Respondent Firm acknowledges that the Board may reject this proposal, complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
9. 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.
10. Respondent Firm understands 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).

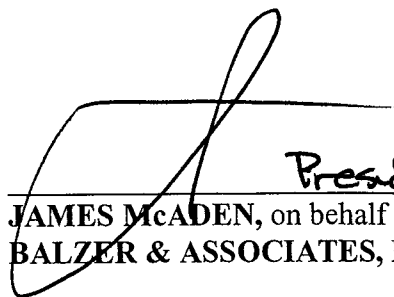
11. Respondent Firm acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any Certificate of Authorization issued to Respondent Firm, and the addition 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 by this tribunal, 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 Fifty Dollars (\$250.00) for offering to practice engineering in West Virginia without a valid Certificate of Authorization.
3. The civil penalties imposed herein totaling Two Hundred and Fifty Dollars (\$250.00) must be paid within thirty (30) days of the date Respondent Firm receives 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 the immediate suspension of the subsequently issued Certificate of Authorization issued by the Board until such penalties are satisfied.

4. 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 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).
5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
6. 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 Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$250.00), 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.
7. 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.
8. 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:


President
JAMES McADEN, on behalf of
BALZER & ASSOCIATES, INC.

8/16/2010
DATE

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

25 day of August, 2010.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS,

By:


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

PREPARED BY:

NICOLE A. COFER
ASSISTANT ATTORNEY GENERAL
STATE CAPITOL BLDG. 1, ROOM 26-E
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