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MAY 29 2018

WV PE BOARD

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

IN RE: **ATC GROUP SERVICES, LLC**

RECEIVED 2018-18

MAY 11 2018

**CONSENT ORDER**

WV PE BOARD

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 resolve the Board-initiated Complaint against ATC Group Services, LLC (“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 matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent Firm, which is organized under the laws of the State of Delaware, applied to renew its Certificate of Authorization (“COA”) No. C01371 for the 2018-2019 renewal period on December 28, 2018.
3. On the COA application, Respondent Firm answered ‘No’ to the disclosure question whether Respondent Firm had ever been subject to any disciplinary action or investigation by any local, state or national regulatory body.
4. Upon further investigation, the Board learned that Respondent Firm had signed a settlement agreement with the State of Ohio Engineers & Surveyors Board which was entered on May 17, 2016, which disciplinary action should have been but was not disclosed in response to the question on the renewal form.

5. The Ohio disciplinary action related to Respondent Firm's offer and practice of engineering on 187 Ohio projects for which the firm was fined.
6. The Board, at its regular meeting on March 20, 2018, moved to initiate Complaint Number C2018-18, which was served on March 29, 2018, and alleged that Respondent Firm perpetrated a fraud or deceit in obtaining the renewal of its COA.
7. The parties have agreed to resolve the Complaint in lieu of Respondent Firm's filing a response.
8. Based on Respondent's contention that the error was inadvertent, the initial charge is reduced herein to providing misinformation to the Board on its 2018-2019 renewal, to which Respondent Firm admits.
9. The Board has taken into account the following factors in reaching this settlement: there was no risk of harm to the public, and Respondent Firm cooperated in the resolution of this Complaint.
10. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs and administrative costs were incurred in the investigation, initiation and resolution of the original complaint.

#### **CONCLUSIONS OF LAW**

11. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code § 30-13-1 *et seq.*
12. Ashley Foti, as general counsel for Respondent Firm and its Secretary, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

13. Providing false information to the Board is a basis for disciplinary action by the Board. W. Va. Code § 30-13-21(a)(12).
14. 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) and W. Va. Code R. § 7-1-15.
15. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to firms. W. Va. Code § 30-13-21(d).
16. Providing misinformation to the Board may subject any person or firm to discipline by the Board, including a civil penalty up to Fifteen Thousand Dollars (\$15,000.00). W. Va. Code R. § 7-1-15.1.
17. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board’s investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
18. 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.

**CONSENT OF RESPONDENT FIRM**

Ashley Foti, as general counsel for ATC Group Services, LLC, and its Secretary and on its behalf, agrees to the following:

19. Respondent Firm is represented by its in-house counsel and is aware of its right to pursue this matter through appropriate administrative and/or court procedures, including its right

to a formal hearing before the Board, and, notwithstanding, Respondent Firm intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

20. Respondent Firm admits it inadvertently provided misinformation on its 2018-19 renewal by not disclosing the Ohio disciplinary action.
21. Respondent Firm accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
22. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter based on the Board's consideration of this Consent Order. This paragraph is binding on Ms. Foti and Respondent Firm even if the Board does not approve this Consent Order.
23. Respondent Firm acknowledges 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 based on the complaint as filed.
24. Respondent Firm understands 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 the Board to enforce the terms of this Consent Order, but that 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 related or unrelated disciplinary matter involving Respondent Firm which may be before this Board.
25. Respondent Firm understands that the original Complaint, documents submitted to the Board by Respondent Firm, and this Consent Order, together with other public

documents 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.

26. Respondent Firm 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").
27. Respondent Firm acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation, non-renewal or non-reinstatement of the certificate of authority issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from non-compliance with this Consent Order.
28. Respondent Firm acknowledges 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 as amended, the summary revocation of any certification issued to Respondent Firm 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, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint Number C2018-18 pursuant to W. Va. Code § 30-13-22(b).

2. The Board **ORDERS** Respondent Firm to pay a civil penalty of Five Hundred Dollars (\$500.00) for providing misinformation to the Board on its 2018-2019 renewal application.
3. The civil penalty imposed herein of Five Hundred Dollars (\$500.00) must be paid within thirty (30) days of the date of entry set forth below, 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.
4. 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”).
5. Any violation of the terms of this Consent Order shall be immediate cause for rescission of this agreement, the reinstatement of the Complaint, the summary revocation of the certification issued to Respondent Firm by the Board, and further disciplinary action by the Board.
6. If the civil penalty totaling Five Hundred Dollars (\$500.00) is 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, 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 penalty agreed to herein.
8. 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 actions except an action by the Board 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 related or unrelated disciplinary matter involving Respondent Firm which may come before this Board.
9. This Consent Order relates solely to matters set forth in West Virginia engineering law 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:**

  
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ASHLEY FOTI, Secretary and General Counsel  
ATC GROUP SERVICES, LLC

5.3.18  
DATE

[additional signature line appears next page]

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 23<sup>rd</sup> day of May, 2018.

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

By: 

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